

# European Commission Revealed? The European Commission and the Enlargement

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**EUROPEAN COMMISSION REVEALED?**  
**THE EUROPEAN COMMISSION AND THE ENLARGEMENT**

PROEFSCHRIFT

TER VERKRIJGING VAN DE GRAAD VAN DOCTOR  
AAN DE UNIVERSITEIT MAASTRICHT  
OP GEZAG VAN DE RECTOR MAGNIFICUS  
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## TABLE OF CONTENTS

<b>1.0</b>	<b>INTRODUCTION .....</b>	<b>1</b>
<b>1.1</b>	<b>EXAMINATION OF THE THEORIES .....</b>	<b>7</b>
1.1.1	POLICY NETWORK THEORY .....	11
1.1.2	ORGANIZATIONAL THEORY OF MINTZBERG .....	16
1.1.3	ORGANIC MODELS FOR GOVERNMENT; THE WORK OF W. MCNEILL.....	18
1.1.4	MEDIEVAL PAPACY- EU MODEL .....	20
<b>1.2</b>	<b>IMMUNIZATION THEORY OF INTEGRATION.....</b>	<b>21</b>
1.2.1	INTRODUCTION.....	21
1.2.2	DEMOCRATIC PARLIAMENTARISM AND ITS BENEFITS .....	31
1.2.3	THE MONNET METHOD INOCULATION .....	37
1.2.4	THE IMMUNISATION OF WESTERN EUROPE: AN OVERVIEW .....	47
1.2.5	THE IMMUNE SYSTEM'S METHODS OF ARRESTING AND DISSOLVING THE COMMISSION.....	67
1.2.6	MOTIVES AND PERCEPTIONS OF THE ORGANIC HOST(S), THE EUROPEAN POLITY -THE MSs.....	72
1.2.7	MONNET AND STATE FORMATION.....	82
<b>1.3</b>	<b>AN ORGANIC EU-PAPACY MODEL .....</b>	<b>91</b>
<b>1.4</b>	<b>THESIS THEORETICAL DEDUCTIONS.....</b>	<b>101</b>
<b>2.</b>	<b>OLAF AND THE ENLARGEMENT.....</b>	<b>103</b>
	INTRODUCTION.....	103
<b>2.1</b>	<b>EU AFTER THE SANTER CRISIS.....</b>	<b>104</b>
<b>2.2</b>	<b>THE CREATION OF OLAF .....</b>	<b>107</b>
<b>2.3</b>	<b>OLAF AND THE ENLARGEMENT .....</b>	<b>109</b>
<b>2.4</b>	<b>THE PROBLEM WITH EU CONTROLS.....</b>	<b>112</b>
<b>2.5</b>	<b>THE EFFECTIVENESS OF OLAF.....</b>	<b>114</b>
<b>2.6</b>	<b>CONCLUSION.....</b>	<b>117</b>
<b>3.</b>	<b>DG ENVIRONMENT (DG ENV) 1 COMMISSION ORGANIZATION FORMAL AND INFORMAL; INTEGRATIONARY DRIVE DYNAMICS, POLICY NETWORKS AND ENTREPRENEURIAL OFFICIALS.....</b>	<b>121</b>
<b>3.1</b>	<b>INTRODUCTION.....</b>	<b>121</b>
<b>3.2</b>	<b>COMMISSION STRUCTURE .....</b>	<b>122</b>
3.2.1	THE COLLEGE OF COMMISSIONERS.....	122
3.2.2	COUNCIL AND MS OFFICIALS .....	122
3.2.3	THE SERVICES .....	123
<b>3.3</b>	<b>THE INFORMAL STRUCTURES OF THE EU WHICH ENCOURAGE LEGAL ENTREPRENEURS.....</b>	<b>124</b>
3.3.1	ORGANISATIONAL MENTALITY.....	124
3.3.2	IRREGULAR PRACTICES .....	125
3.3.3	CABINETS AND DIRECTOR GENERALS.....	125
3.3.4	DOSSIER NETWORKS .....	125
3.3.5	UNDERSTAFFING AND OFFICIALS' DISCRETION.....	126
3.3.6	EXCESSIVE BUREAUCRACY AND NETWORKS.....	126

3.3.7	LEGISLATION GENERATION AS A PERFORMANCE BENCHMARK .....	128
<b>3.4</b>	<b>MAIN ACTORS: DESK OFFICERS AND HEADS OF UNIT.....</b>	<b>129</b>
3.4.1	DELORS AND THE DESK OFFICER.....	129
<b>3.5</b>	<b>ENTREPRENEURIAL TACTICS IN THE COMMISSION.....</b>	<b>131</b>
3.5.1	THE ADOPTION OF A LEGISLATIVE PROPOSAL .....	131
3.5.2	THE ROLE OF DIRECTORS AND COMMISSIONER.....	132
3.5.3	ECONOMISTS AND LAWYERS .....	132
<b>3.6</b>	<b>CIRCUMNAVIGATION OF VARIOUS OPPONENTS AND THE HIERARCHY (See Figure 1).....</b>	<b>132</b>
<b>3.7</b>	<b>ESTABLISHING DG ENV.....</b>	<b>134</b>
<b>3.8</b>	<b>EVIDENCE OF ENTREPRENEURIAL ACTIVITY .....</b>	<b>137</b>
<b>3.9</b>	<b>CONCLUSION.....</b>	<b>139</b>
	Interview Dates.....	141
	DG Environment Officials .....	141
	DG Cabinet and ex Cabinet Members .....	141
	European Parliament .....	141
	NMS Officials .....	141
<b>4.</b>	<b>DG ENV 2 COMMISSION SLOW DOWN; MS INTERVENTION AND COMMISSION BUREAUCRATISATION: DG ENV .....</b>	<b>142</b>
	INTRODUCTION .....	142
4.1	RE-ORIENTING THE DG .....	145
4.2	MS VERSUS POLICY NETWORK .....	147
4.3	THE RESULT .....	150
4.4	BUREAUCRATISATION OF THE DG.....	152
4.5	THE KINNOCK REFORMS.....	153
4.6	THE ENLARGEMENT.....	157
4.7	CONCLUSION.....	160
<b>5.</b>	<b>THE EUROPEAN ENVIRONMENT AGENCY.....</b>	<b>121</b>
5.1	INTRODUCTION.....	163
5.2	THE EC TREATY, THE REGULATION AND THE EEA .....	165
5.3	EEA ORGANISATION AND WEAKNESSES.....	167
5.4	THE DG ENVIRONMENT- EEA RELATIONSHIP .....	170
5.5	RESTRUCTURING AND REORGANISING THE EEA.....	175
5.6	EEA AND THE ENLARGEMENT.....	180
5.7	CONCLUSION.....	183
	Dates of Interviews Held with:.....	185
<b>6.</b>	<b>DG AGRICULTURE (DG VI) .....</b>	<b>187</b>
6.1.	CAP HISTORY .....	188
6.1.1.	CAP .....	188
6.1.2	CAP REFORM.....	189
<b>6.2</b>	<b>DG AGRICULTURE.....</b>	<b>192</b>
6.2.1	THE CAP PROCESS ACTORS .....	193

<b>6.3</b>	<b>THE STRUCTURE OF THE DG</b> .....	<b>196</b>
	DG AGRI ORGANIZATION.....	196
6.3.1	MS INFLUENCE IN THE DG .....	197
6.3.2	BUREAUCRATIC .....	198
6.3.3	STAFFING .....	199
6.3.4	CHANGES IN DG STRUCTURE.....	199
<b>6.4</b>	<b>GROUPS WITHIN THE DG</b> .....	<b>200</b>
6.4.1	CMO UNITS .....	200
6.4.2	'THE POLICY PEOPLE' .....	201
6.4.3	THE GENERALIST REFORMERS.....	202
6.4.4	MEDITERRANEAN GROUP .....	203
6.4.5	EUROPEAN IDEALISTS .....	204
6.4.6	THE AUDITORS AND KINNOCK REFORMERS.....	205
<b>6.5</b>	<b>GENERAL DG ORGANISATION INEFFICIENCY</b> .....	<b>205</b>
6.5.1	GENERAL INEFFICIENCY.....	205
6.5.2	STAFFING INEFFICIENCIES .....	209
<b>6.6</b>	<b>REFORMS RE-INTERPRETED</b> .....	<b>210</b>
6.6.1	FRAUD AND LACK OF MANAGEMENT CONTROL .....	212
<b>6.7</b>	<b>SECTORISATION AND POLICY NETWORKS</b> .....	<b>214</b>
<b>6.8</b>	<b>ENLARGEMENT</b> .....	<b>220</b>
<b>6.9</b>	<b>CONCLUSION</b> .....	<b>227</b>
	Dates of Interviews Held with DG AGRI Officials.....	228
	Dates of Interviews Held with NMS Officials.....	228
<b>7.</b>	<b>DG ENTERPRISE AND INDUSTRY (DG ENT)</b> .....	<b>229</b>
<b>7.1</b>	<b>INTRODUCTION</b> .....	<b>229</b>
<b>7.2</b>	<b>COMMUNITY INDUSTRIAL AND ENTERPRISE POLICIES: A BRIEF HISTORY</b> .....	<b>230</b>
<b>7.3</b>	<b>ENTERPRISE AND SMEs</b> .....	<b>236</b>
<b>7.4</b>	<b>DG ENTERPRISE AND INDUSTRY MAIN COMPONENTS</b> .....	<b>246</b>
<b>7.5</b>	<b>THE CREATION OF DG ENTERPRISE BY REORGANISATION OF DG III and DG XXIII</b> .....	<b>248</b>
<b>7.6</b>	<b>DG ORGANISATION</b> .....	<b>252</b>
7.6.1	STAFF AND MANAGEMENT .....	254
7.6.2	UNIT LEVEL .....	256
<b>7.7</b>	<b>DG ENT ADVOCACY COALITIONS POLICY NETWORKS</b> .....	<b>258</b>
<b>7.8</b>	<b>MS AND INDUSTRY CAPTURE OF THE DG</b> .....	<b>261</b>
<b>7.9</b>	<b>DG BUREAUCRATISATION</b> .....	<b>265</b>
<b>7.10</b>	<b>COMMISSION LAUNCH OF NEW DYNAMIC PHASE?</b> .....	<b>268</b>
<b>7.11</b>	<b>COMMISSION FRAGMENTATION: INTER DG RELATIONSHIPS</b> .....	<b>268</b>
<b>7.12</b>	<b>ENLARGEMENT AND THE DG</b> .....	<b>272</b>
7.12.1	A DG PERSPECTIVE ON THE ENLARGEMENT .....	274
7.12.2	NMS PERSPECTIVES ON THE ENLARGEMENT .....	274
<b>7.13</b>	<b>CONCLUSION</b> .....	<b>277</b>
	Interview Dates.....	279
	DG Enterprise Officials.....	279
	NMS Officials .....	279
	Poland .....	279
	Estonian .....	279
	Hungary .....	279
	Czech Republic.....	279



<b>8.</b>	<b>DG REGIONAL POLICY .....</b>	<b>280</b>
	<b>MS INFLUENCE AND POLICY NETWORKS VERSUS ENLARGEMENT?</b>	<b>280</b>
<b>8.1</b>	<b>THE EU STRUCTURAL FUNDS POLICY: THEORY, HISTORY AND PRACTICE.....</b>	<b>281</b>
8.1.1	THEORY .....	281
8.1.2	HISTORY .....	282
8.1.3	PRACTICE.....	288
<b>8.2</b>	<b>COHESION POLICY CRITICISED .....</b>	<b>291</b>
	THE SAPIR REPORT AND OTHER CRITICAL VOICES .....	291
8.2.1	CRITICISM OF THE 'CONVERGENCE' OBJECTIVE; AND FURTHER 'ECONOMIC CRITICISM' .....	294
8.2.2	COHESION POLICY: VAGUENESS AND COMPLEXITY AND MS POWER.....	296
8.2.3	COHESION POLICY SHOULD BE RE-FOCUSED .....	297
8.2.4	COURT OF AUDITOR CRITICISMS.....	299
8.2.5	THE COMMISSION RESPONSE; REFORM CALLS RESISTED; THE THIRD REPORT ON ECONOMIC AND SOCIAL COHESION AND THE NEW COUNCIL REGULATION PROPOSED.....	301
<b>8.3</b>	<b>COUNCIL REGULATION (EC) No 1260/1999 AND ITS PROPOSED REPLACEMENT COM (2004) 492 final.....</b>	<b>305</b>
<b>8.4</b>	<b>DG REGIO ORGANISATIONAL STRUCTURE.....</b>	<b>309</b>
8.4.1	MS INFLUENCE .....	310
8.4.2	DG BUREAUCRATIZATION AND RE-CENTRALISATION.....	311
<b>8.5</b>	<b>COMMISSION FRAGMENTATION .....</b>	<b>315</b>
<b>8.6</b>	<b>POLICY NETWORK POTENTIAL .....</b>	<b>317</b>
<b>8.7</b>	<b>ENLARGEMENT AND THE COHESION POLICY .....</b>	<b>320</b>
8.7.1	PRE ACCESSION PHASE.....	320
8.7.2	ENLARGEMENT AND THE COMMISSION.....	325
8.7.3	ENLARGEMENT AND OLD MS OPPOSITION.....	326
8.7.4	POLICY NETWORKS, MSs AND RESISTANCE TO ENLARGEMENT .....	329
8.7.5	DG AND NMS PERCEPTIONS ABOUT EACH OTHER AND THE ENLARGEMENT .....	332
8.7.5	DG OFFICIALS VIEWS ABOUT THE NMSs .....	334
<b>8.8</b>	<b>CONCLUSION.....</b>	<b>335</b>
	Dates of Interviews Held with DG REGIO Officials .....	339
	Dates of Interviews Held with NMS Officials.....	339
<b>9.</b>	<b>CONCLUSION .....</b>	<b>340</b>
	<b>SUMMARY OF THE THEORY AND CASE STUDY FACTS .....</b>	<b>340</b>
<b>9.1</b>	<b>SUMMARY OF THE THEORY .....</b>	<b>340</b>
<b>9.2</b>	<b>SUMMARY OF THE CASE STUDY FACTS .....</b>	<b>342</b>
9.2.1	ANTI FRAUD AGENCY (OLAF).....	342
9.2.2	EUROPEAN ENVIRONMENTAL AGENCY (EEA) .....	344
9.2.3	DG ENVIRONMENT (DG ENV) .....	346
9.2.4	DG AGRICULTURE (DG AGRI).....	348
9.2.5	DG REGIONAL AFFAIRS (DG REGIO) .....	352
9.2.6	DG ENTERPRISE AND INDUSTRY (DG ENT).....	355
9.2.7	DGs: ANY ENLARGEMENT WINNERS?.....	360
	THE EU SINCE DELORS: MS ASCENDENCY.....	362
<b>9.2</b>	<b>EU FRAGMENTATION.....</b>	<b>364</b>

<b>9.3</b>	<b>COMMISSION FRAGMENTATION AND MS INFLUENCE .....</b>	<b>369</b>
9.3.1	COMMISSION FRAGMENTATION AND ITS WEAK CENTRE .....	375
	THE SECRETARIAT GENERAL (SG): VIEW FROM THE CENTRE.....	375
<b>9.4</b>	<b>COMMISSION AND DG FRAGMENTATION: POLICY NETWORKS .....</b>	<b>379</b>
9.4.1	POLICY NETWORKS AND THE DGs .....	379
9.4.2	COMMISSION STRUCTURE.....	383
9.4.3	NETWORK MEMBER MOTIVES.....	384
9.4.4	A THEORETICAL CONSIDERATION.....	387
<b>9.5</b>	<b>THE REFORMS AND COMMISSION BUREAUCRATISATION.....</b>	<b>388</b>
<b>9.6</b>	<b>ENLARGEMENT AND THE COMMISSION.....</b>	<b>395</b>
<b>9.7</b>	<b>A MINTZBERG – HOFSTEDE DIAGNOSIS OF THE COMMISSION.....</b>	<b>398</b>
9.7.1	MINTZBERG ON THE COMMISSION .....	398
9.7.2	MINTZBERG AND THE DGs.....	406
9.7.3	HOFSTEDE AND THE COMMISSION .....	409
<b>9.8</b>	<b>IMMUNISATION THEORY.....</b>	<b>410</b>
9.8.1	IMMUNISATION THEORY REVISITED.....	410
9.8.2	EXECUTIVE POWER INCREASE.....	414
9.8.3	DEMOCRATIC ISSUES .....	416
<b>9.9.</b>	<b>PAPAL MODEL REVISTED .....</b>	<b>418</b>
<b>9.10</b>	<b>RECOMMENDATIONS .....</b>	<b>428</b>
9.10.1	CONCLUSION SUMMARY .....	428
9.10.2	CONCLUSION RECOMMENDATIONS .....	430
	Dates of Interviews with the SG .....	433
<b>APPENDIX 1 .....</b>		<b>434</b>
<b>INTERVIEW METHODOLOGY .....</b>		<b>434</b>
<b>LIST OF ABBREVIATIONS.....</b>		<b>435</b>
<b>BIBLIOGRAPHY .....</b>		<b>437</b>
EU Documentation.....		443
UK Houses of Parliament Documentation .....		444
OECD Documentation.....		444

## SUMMARY

The book confronts squarely the changing role and behaviour of the European Commission. Whilst much of the literature is focused on the unique qualities of the integration project and its core institutions, this work defies the trend. Instead it places the European Commission firmly in a line of institutional types which have existed before, as in the case of the Medieval Papacy which was analysed in the author's earlier published book "EU: Papacy Reincarnated?"

This last book examined the Medieval Papacy and found a series of parallels between its earlier development and that of the ECSC and EEC. In particular the period of the so-called Reform Papacy, dating from around 1054, showed Rome and the Papacy to have grown from a modest spiritual centre to the political - spiritual powerhouse of Christendom. It generated vast amounts of legislation to run Christendom and in particular the sectors, often economic, which the church controlled. Secular rulers were placed, to a disputed degree, under its legal jurisdiction. The political ambitions of the Papacy failed to be fulfilled which would seem questionable that those of the EC and EU will meet a better fate. Both would have liked the Political rulers to have been more integrated into a structure headed by the organs of Papal or European government. Finally it can be said that the organisational structures of both, their development and ethos had a range of similarities which arguably show their relationship.

The 2004 Enlargement of the EU was used by the thesis to assess its effects on the European Commission departments and also the New Member States (NMS). The European Commission was expected to have been placed under pressure by the enlargement which would reveal certain internal structures, formal and otherwise. In fact, it was expected that some of the fundamentals of the European Commission and thus the integration process might be revealed by analysis performed whilst the organisation was going through this tough period.

The thesis accepts and incorporates many of the mainstream theories of European integration and some if not all of their main assumptions into a new theoretical perspective. So it accepts many of the notions of inter-governmentalism and neo-functionalism and the other main theories and considers them to both be correct in part. What is missing is an explanation about how the process has been driven, why can both or all seem to be right at the same time? What is the mechanism for the achievement of integration? What is necessary is a meta level theory to integrate the others.

The process of developing such a theory was partially inspired by realising that the Commission uses almost all types of organisational structure type as distinguished by Mintzberg and that it combines them even if they seem practically incompatible. Indeed the combination of organisational types found in the Commission could be argued to be extremely unusual. But the thesis found that the complex multi - organisational structure of the Commission in fact often worked to its advantage. This explained how different theories of integration could be correct to some extent, depending on the type of organisation it would focus upon and which period of time and in what environmental circumstances it found itself in. The question remained however, how organisational change is caused and proceeds.

The answer proposed here is a form of functionalism and in the realms of cells and organisms and the perception that human society has, metaphorically speaking, for analytical purposes similar qualities. This is, in and of itself, not so surprising since neo-functionalism was ini-



tially one of the most successful mainstream theories for analysing the integration process. However the older notion of functionalism as was constructed by Herbert Spencer, with antecedents probably in ancient Greece is also useful. He developed an intricate theory with, at its centre, an organic analogy referring to and relating cells, animals, humans and social relations. Evolutionary pressure was seen to be the driving force behind social change and worked in a cyclical manner. Whilst recognising that we are only talking about similar phenomena being observable between organisms and social structures and that the analogy can only be used so far, from functionalism it is possible to consider society to be “organic”, evolutionary and responsive. In many ways it behaves like a human body responding to threats and pressures.

If a body can get ill and dysfunction then it seems that so can a social body. Warfare can be seen as a major form of a disease, a point developed by McNeill, which afflicts the social body. Wars do not just arise from nowhere often there is an imbalance in the “organic body”, an underlying disorder which makes it susceptible to war. Political extremism, ideological and often undemocratic, is one such problem, another is economic instability; combined war is all too likely. Regarding the European continent prior to the Second World War, nationalism and ideologies can be said to have both become pathological.

If a social body can get “ill” it should also be treatable by the application of medicine. One important branch of medicine is that of immunology and the application of vaccines to provide protection to the body and to prevent a recurrence of disease. A doctor treating the bloodied continent after the Second World War might have said that what was needed was a vaccine to prevent another war. The vaccine would need to address the economic as well as the political causes of war and also remove the very possibility for another outbreak. Vaccines are usually basically made up of dead virus and will provoke mild but similar responses from the body to those that the full blown disease would cause. In the process it stimulates the body’s defences to make any full scale outbreak of the disease impossible. In essence a pathogen is used to cure a pathological condition.

It is argued that bureaucracy, which is often not terribly productive economically, can be considered to be a pathogen, or a parasite; but sometimes it can be seen as a cure for warfare. Many aspects of the European Commission could be seen in a ‘theoretical’ manner to be pathological, i.e. not in accordance with what certain fundamental theories, such as that of Max Weber’s, expect. However, most or many things in life must be seen in relative terms and the same is true for the pathology (ies) of the European Commission. As the previous paragraph indicated pathogens can cure and prevent disease, if applied correctly. Whilst the analogy cannot be extended too far it allows us to consider the pathological state of Europe prior to the Second World War and to see how this problematic political reality required the European Commission and the integration project to remedy the sick state of the continent at that time. This does not imply, of course, that this bureaucracy is still fulfilling this function.

Two forces are seen to have been at work in the evolution of the EU, one is the key component of the vaccine, the Monnet Method and the other is Democratic Parliamentarianism. The former is here defined as the deliberate, promotion of spill-over from one sector to another, engrenage, technocracy, functionalism, all in all, the breaking down of issues, problems and governmental structures. It is located at the heart of supra-nationalism.

The second factor, Democratic Parliamentarianism, is defined as the traditional liberal democratic governmental structure, rationale and methods of the Nation States in much of Western Europe. It had lost much of its credit in the interwar period. It was restored, however, because



of the victory over fascism under the leadership of the Anglo-Saxon democracies. Both democracy and fundamental rights were promptly internationalised in institutions like the UN and the Council of Europe. They acted as partial guarantees not only of freedom, but also against war, at least in the western world that found itself threatened by communism, both externally by Soviet Russia that had almost all of Central Europe under its control, and internally, because of the popularity of communist parties in France, Italy and Greece.

However owing to the extent of these external and internal threats, fundamental rights and democracy appeared as insufficient to keep Western Europe a part of the free world if it would not also become united both economically and militarily. This explains why the US pushed so much for European integration rather than the European nation states who had successfully defended their independence (Great Britain) or just regained it (the continental nation states), and who (notably France) were reluctant to start co-operating with Western-Germany. It was also only after the French initiative of integrating Europe as a political and military Union had failed in 1955 that the alternative of a European Economic Union was taken in hand on the basis of the Monnet Method that had proven its viability in the ECSC.

However, democracy was foreign to the Monnet Method, in principle at least. Democratic politicians were to an extent seen as brokers between interest groups. In fact, Monnet had turned away from the ECSC because he was disappointed about a European Assembly being attached to it. The technocratically fragmentising Monnet Method places the centre of political power and initiative with the bureaucracy.

Typical for parliamentary democracies are political parties with fairly encompassing party and election programmes, usually inspired by a certain political ideology, between which citizens have a choice in periodical elections. Democratic party politics is about the aggregation and inclusion of issues, interests and even groups and parties, especially if government has no majority party to support it. Democracy understands itself as a bottom-up model which is transformed, after the elections, in a top-down model, as the government that, directly or indirectly results from it, is supposed to impose its will on the state bureaucracy that is supposed to operate in conformity with it *sine ira et studio*.

In contrast to the aggregative-inclusive nature of democratic parliamentarianism, the Monnet Method is fragmentising and technocratic. It splits up issues both substantively and administratively. This is not because it cannot perceive connections between issues. Quite the contrary. Precisely because there are functional connections between fragmentised policy fields it counts on spill-over taking place slowly but surely.

The above named forces make up the somewhat unlikely pair that has nevertheless been put together in the EEC and even more in the EU. And yet they should not, according to a traditional political perspective, exist harmoniously together in the structures that they have formed but rather compete. This has, in fact, been the case and both have constantly striven to take over the leadership role. The result of the struggle for dominance is the EU as it is today. The Commission often served as the carrier of the Monnet Method, but could also fall foul of it and itself be fragmented. The more sectors the Commission has entered into, the more problems of co-ordination have risen that demanded to be solved by a central governmental institution on the basis of a democratic mandate, a mandate that is lacking in the case of the Commission and that national governments can invoke to lame the Commission if necessary or to infiltrate it in sectors perceived as of great national interest.

The results of the analysis revealed that in the Commission the Monnet Method had had a highly effective structure for surviving in a hostile environment and achieving its goals. Whilst the Commission could be, from a theoretical perspective, considered to be pathological it was found to have had multi-faceted unique organisational structure which had functioned well. Some of the Commission's confusing aspects, like its rigid complex bureaucracy dating back to the 1950s, in fact served the useful purpose of protecting it within the European integration cycles, in particular from the Member States when they attempted to slow integration and thus the Commission down.

The Monnet Method in the Commission had successfully carried out a policy of fragmenting major issues, problems and opposition. Many competences had been successfully fragmented from the Member States and incorporated into the new European governmental layer. It had succeeded in many ways in creating, or provoking the necessary elements for a new European government; European level institutions had been generated in response to the 'vaccine,' usually to contain it and apply political / democratic controls to it. Policy Networks which DGs, or elements in the DGs, have seemingly created or encouraged and at times led, are, to an extent, the natural governmental arms issuing from Brussels to the would be federally organized states. European wide sectoral power to an extent naturally resides in these.

In the nineties, after the enormous steps taken towards integration with the Treaty of Maastricht, fragmentation within the Commission and within the various DGs had increased so much that the top of the hierarchy in the Commission seemed to be beginning to lose their grip on their apparatus. The last Delors Commission left behind an organisational structure that was still geared to integration promotion but was now over-stretched and facing the post Maastricht EU. This led to a crisis in the Commission which was analysed by the Committee of Independent Experts, established to get the crisis under control. The crisis enabled the attempt at bureaucratisation, modestly begun by Santer, to develop some more momentum. The number of horizontal units in the DGs, the units which deal with bureaucratic tasks rather than policy making, shot up as did the amount of bureaucratic procedures staff were required to perform. The result was some Commission slow down. The reaction of the Commission during the later nineties and up to the enlargement appears to have been a tempering of its initiatives and increasing bureaucracy to try to make itself immune from attacks. This can be described as a sort of retreat, regroup and advance process.

Seen in a longer term perspective the Commission follows the pattern of changing speeds of European integration in which bursts of integration are followed by longer periods of seeming stagnation. From this perspective bureaucratisation and changes in the speed of integration is a form of immunisation against criticism of the role of the Commission and against the attempts of MSs and interest groups to over-influence and infiltrate the Commission. However, in earlier periods of stagnation the Commission was quickly able to change from a state of apparent inertness into an organisation that used the opportunities for further integration given by the common desires of the MSs. The bureaucratisation reforms seem to be little more than another phase in the cycle of the Commission varying between emphasising its role as: a policy manager; a policy maker; a civil service bureaucracy; a proto federal government top level executive. It decides on its role to be emphasised according to the environment it finds itself in.

And indeed the signs of an intended re-launch of the integration process were present in the later part of the Prodi Commission. A period of Commission perceived timidity during the mid - nineties giving way to a more up-beat approach later under Prodi. The introduction of the European Constitution bear this out along with the attempt to make the Commission more



like a national government with Commissioners more like national ministers based in their DGs. Indeed Prodi was said to have wanted to see more staff relocated to making policy, presumably to enable the re-launch. In DG Enterprise and Industry (ENT) there were signs that the numbers of staff in the sectoral units were gradually increasing. DG Regional Policy (REGIO) was seen to be robustly developing a re-launch potential with the new regulation for their policy that they were proposing which contained more bullish language than its predecessor. The anti-fraud organisation of the Commission (OLAF) which had been seen as part of the bureaucratic belt around the Commission was by the mid-term of the Prodi Commission being used as a tool to generate integration, the creation of a European Prosecutor and a new legal framework to contain the activities of OLAF. Another sign of the re-launch readiness of the Commission is in its claiming a leading role for the EU in fighting global warming and the European Council's willingness at its meeting of June 2007 to honour the ambitions of the Commission by adding climate control to the goals of the EU in its proposal for changing the Treaties.

The increase in re-launch potential from a stricter bureaucratic base seems paradoxical. However this can be explained rather ironically with recourse to the horizontal units in DGs. These were said by staff to be the most idealistic about general European integration, unlike the policy making sectoral units which seemed to develop sectoral loyalties and idealism quite quickly. Thus the paradox of an expansion of horizontal units accompanying a re-launch of integration is partially explained by the increase in idealism for the European project as whole and no doubt a growing desire and pressure for its re-launch that these units provide. In general the period under discussion followed the pattern set earlier of integrationary stop and go progressive process; EC expansion and then stagnation; Commission dynamism and then bureaucratisation. The enlargement itself can be said to have added to the problems of co-ordination and control that the Commission was undergoing. The resultant bureaucratisation and slow down were in part exacerbated by the enlargement but it too was negatively affected by both. This and the other theoretical points made earlier are what our empirical findings, now to be presented summarily, bear out.

Detailed case studies were performed on six EU organisations to test for the impact of the enlargement on them. These case studies included elite interview material from a variety of perspectives, primary and secondary literature. The goal was to collect data from a wide variety of Commission organisations and one non Commission organisation which would also be able to comment on the activities of each other. In addition interviews were carried out with New Member State (NMS) officials working with the Commission who could comment on the Commission organisations. Furthermore interviews were carried out with the Secretariat Generale, the headquarters of the Commission and responsible for its co-ordination to gain more insights.

Two Directorate Generales, (DGs), Commission departments, which pay out large sums of money, were chosen which had plenty of sectoral contact with the NMS, DG Agriculture (AGRI) and DG REGIO. In contrast two policy making DGs, DG Environment (ENV) and DG ENT with frequent NMS contact were also chosen. OLAF was chosen to offer insights into the Commission reforms. The European Environment Agency (EEA), an EU organisation, was there to provide information on DG ENV and the enlargement process which it was also involved, and also as it represents what might be one of many potential sectoral agency substitutes for the Commission in the future. Such agencies can count on distrust from the Commission.

OLAF finds itself well within the cycle of defensiveness in the Commission as the latter's reaction to OLAF shows. The reform that OLAF represented was accepted but only allowed a limited impact, it appeared to be more for external audiences than for real effect. OLAF was not totally independent of the Commission and its investigative powers were still being discussed. The resources initially available for the organisation were kept low by the Commission and the tasks it was required to perform vast. At the same time the Commission did seem to see in OLAF the possibility of making its officials more like a civil service and so removing some of the external influences and unhealthy link ups between industry, MSs and Commission officials. OLAF was useful for the Commission's bureaucratisation moves to appear less problematic and a threat. OLAF seemed to have added to the general slow down in the Commission, particularly as Commission staff were made subject to increasing numbers of financial audits to prevent any OLAF investigation.

The Commission was also apparently quite capable of turning the threat into a benefit over time above all by using OLAF in its own cycle of organisational bureaucratisation and then re-launch of the integratory mission. The OLAF staff who were really there to control corruption and fraud, in particular in the Commission, were to help launch new integratory moves like EUROJUST and the European Public Prosecutor. OLAF showed the tendency of the Commission, and EU in general, to require things from the NMSs which would not have been necessary had the Commission been in better shape itself. OLAF can be seen very much in the light of the creation of another actor in the EU system, or rather the re-invention and strengthening of an old one, to solve a problem which could maybe have been better solved by a more rational organisational structure.

The EEA was an interesting case as it revealed some trends in the EU and also showed once again the Commission's resistance to real, permanent reform and any organisation that is in a position to inspect it and its performance. The Commission is said to react rather allergically to European agencies regardless of their usefulness; understandable granted that the MSs do indeed seem to perceive the EEA at least as a useful institutional counter to the Commission. The EEA reflects what would appear to be a concerted attempt by the MSs to reassert control over the environmental field. On a more fundamental level the combination of sector interests with MS actors happened in the EEA, as had also happened in the ECSC with the steel cartels and MSs. The EEA seems to be a symptom of the general sectoralisation of the EU policy fields, much like the other agencies and so related networks, with more power going to sectors and MS-Commission rivalry resulting in yet more actors with diluted compromise competences which are not effectively coordinated by any central authority. The EEA was quite critical about the DG and its enlargement activities and alleged the habit of the Commission failing to coordinate itself internally and as a result requiring that the limited resources of the NMSs be used to construct networks which were duplicating each other. A particularly interesting finding was the changing relationship of the EEA and DG ENV. Whilst the DG was more environmentally active and in a state of internal conflict, the conflict with the EEA was at its worst. As the DG was re-oriented via personnel reorganisations at various levels and economic interests apparently became more important so the conflict between the two seemed to grow less. At times the EEA seemed to almost present an alternative sectoral approach to managing the policy field, far more modern and less formal, with a more partnership-like approach to the MSs than the DG.

DG ENV revealed much about the sort of behaviour that the Commission encourages in officials to help it to expand when the time is right. The micro level of the officials shows the entrepreneurial qualities that the hierarchy appears to lack. Furthermore the rigidity of the hierarchy seems less dramatic when observations are made about how the Commission works



in practice and what sort of behaviour it tacitly encourages. There is a real sense that the bureaucratic rigidities are retained but ignored for certain phases in the EU cycle. The Commission has been shown to encourage self sufficiency in the officials with staff members having to fend for themselves. Initiative is promoted as any success gained is often down to the decision to act being taken by an official. Freedom is very present with the official possessing incredible room for choice and discretion, quite unlike anything their equivalent in the MS civil services would possess. The official must be able to network and thus possess the social skills which are basic to success. Entrepreneurial sensitivity is also required for officials to be able to find the opportune moment to introduce a legislative product that is sure to succeed. Officials are encouraged to compete for everything in the Commission, for their position; their promotion the possibilities for which can be extremely scarce in particular to the position of Head of Unit; and for their dossiers.

The DGs which possess such officials, who have, as it were, front-line experience, are in possession of a valuable commodity. If correctly placed these officials could be expected to carry their DG to success. The vast amounts of environmental legislation that Europe has produced combined with the information gained during interviews, appear to show a DG made up of extremely capable officials, often lawyers, who have not only been quite entrepreneurial in their behaviour but also successful in ensuring the passage of their laws; a task which involves political and networking ability. The DG created work for itself. In fact the combined evidence of the accident - legislation correlation would appear to be suggestive evidence that entrepreneurs have been present in the DG and combining very effectively with Policy Networks. The DG showed dynamic officials seemingly encouraged to circumvent hierarchies so long as this was deemed desirable by the Commission as a whole. The Commission used various methods to temporarily clamp down on some of this behaviour.

The case study also seemed to show one policy network in action ironically those who held to the old culture and ideology of the DG. They adhered closely to the most idealistic forms of Europeanism and environmentalism. But the MSs were allegedly willing to exert pressure to control the DG as it was also no longer in tune with the more economically oriented Commission and EU. Personnel re-organisations were effected in the DG as was mentioned above to seemingly weaken and break down policy networks. The DG has allegedly become more centralised, in particular due to the wave of bureaucratization which was discussed in the chapter, and certainly controlled its officials, including the policy network mentioned more closely, at the same time the issuing of legislation has decreased and the DG's profile has become blurred. Intensive inter-DG rivalry was noted to have occurred along with fragmentation. DG ENV and DG ENT were said to have had so called mirroring units which were used to watch every move of the other DG.

The Fragmentation and rivalry between DGs was also noted with DG AGRI. The next point is that the growing power and willingness of the MSs to interfere in a DG seems to be most clearly shown in DG AGRI. There are allegedly examples of MSs pressing their nationals into positions as low as Head of Unit level and MS officials showing quite clear MS loyalty in their decisions. According to the literature, there is a process of re-nationalisation going on in the policy and there are some who would like to see this continue. Unsurprisingly many within the DG have resisted this tendency and the reforming of the policy or the DG. The growing bureaucratization was also outlined in the chapter, serving as it did the multi purposes of changing the image of the DG and Commission from dynamic political actor to slow, safe bureaucracy and reducing the power of Policy networks and MSs. Also the case chapter demonstrated that the outsiders, the NMSs, lost out as a result.

The complex bureaucratic requirements resulted in minimal payments to them in the period stated. The DG was described as being a tense place in part due to the different national management views. In organizational terms the DG has witnessed more power going to horizontal units and directorates, those dealing more with bureaucratic administrative tasks. Personnel reorganization was used as a tool to achieve many goals including overcoming the resistance to policy reform that had been successful before. Allegedly there was resistance in some of the market units (CMOs) to the reforms which would affect their sectors and of course their units. The DG had allegedly been resilient to reform and reorganization.

DG REGIO had until recently seen the MSs gradually clawing back control over its policy with the DG taking on a more checking role than a decision making one. There has been an increase in horizontal units, as in most DGs; the growth reflecting the need to coordinate the DG better and the fact that during reform horizontal units have more power. The DG was alleged to have a weak centre and that its Directors were pretty independent. The DG seemed to be trying to centralise itself. The hierarchy of the DG has apparently become more centralized. There was allegedly tendency for MSs to want to appoint politically favoured individuals to top positions in the DG. As in other DGs some of the bureaucratic reforms have been somewhat turned on their heads, and a seeming use of bureaucracy for its own sake. As with all DGs there was alleged to be a history of almost unbelievable inter-DG rivalry. There were said to have been struggles over cohesion policy between DGs and at times a struggle between ideologies. On the theme of networks in general and policy ones in particular, it seems likely that the DG had plenty of both. Some seem likely to have been not very favourable to the enlargement, with certain policies being decided on which were problematic for the NMSs. This all resulted in a negative conception of the process by NMSs, and a feeling that it was geared against them. Within the DG several directorates were stated to have remained apart from the enlargement even though this should not have been the case. Finally in the 2004 re-organization they were forced to change.

Where DG ENT is concerned the current state of inter-DG communication and co-ordination was described as being problematic. The MSs appeared to have been increasingly interfering in the DG. There had been a dramatic increase in the number of staff involved in the horizontal units. There have been at least two major reorganizations to bring the DG into line with the Lisbon criteria and to house the new Competitiveness Commissioner. It was stated that the many reforms affecting the DG and in particularly those affecting the Heads of Unit were problematic for the enlargement as they simply did not have the time to concentrate on all their tasks at once. Parts of the DG were alleged to contradict each other, according to NMS officials, who also criticised the excessive bureaucratic procedures which had doubled or trebled. Inter-DG communication and coordination was criticised and that DGs had too much discretion and the decisions reached had been 'odd'. The DG was said in the past to have had policy networks present but the major reorganisations seem to have reduced their clout.

The findings of the case studies into the various EU organisations can be said to have shown indications of the following: Commission fragmentation, the growth of policy networks, greater MS involvement in DGs, and, by way of a reaction, the growth of bureaucratic procedures, use of personnel reorganisations to deal with the policy networks, and, finally, a gradual move towards a re-launch of the Commission.

After making a diagnosis a prognosis should follow. The Medieval Papacy developed in a way very similar to the EU. The Papacy also appeared to behave as a vaccine against war and lack of unity. Certainly a layer of governance developed at a supra-national level on the European continent that had not been there before. What the EU can learn from the history of the

Church, the integrating power in medieval times, is that because of its overriding concern with maintaining itself as a bureaucratic organisation and as a political force, the believers saw it more and more as a corrupt organisation that was rather concerned with its own interests and those of the political elite than with those of the believers. What began as an idealistic organisation became over the years a centralised and centralising bureaucracy. The Medieval Papacy saw itself and Christendom become hopelessly complex, fragmented, bureaucratic and distant from its citizens. It was said that the sheer amount of canonical and secular legislation was suffocating. The Sacred College at times fragmented into clientele networks often with secular authorities heavily involved in them. Increasingly Cardinals were seen to be pursuing regional loyalties and networks rather than pursuing the universalist, official goals of the Papacy. Conciliarism of the 15th century represented a courageous bottom up attempt at preventing the disintegration of the church. However, the reaction of the church bureaucracy was not to support democracy but, on the contrary, to ignore the need for reform and instead reorganised and reinforced the bureaucracy. The result was a definitive division of the Church during the reformation.

Some of the trends described above can be, to an extent, seen in the recent history of the EU, as was stated in the summary, and should serve as a warning and impetus for reform and greater democracy. The recent re-launch of the rejected constitution this time as a treaty which allows the national executives to avoid or rather ignore their citizens stated views sounds familiar enough to anyone reading about medieval Europe. Church – State executive relationships were often unhealthily close and this was particularly true as the reformation approached. The right response would be to heed the warnings and restructure the EU and render it democratically viable for the future. The yellow and red card procedures may help to increase the involvement of national parliaments in the EU and have a diminishing effect on violations of the proportionality and subsidiarity principle. But it is very questionable, however, whether this will also help to increase the involvement of the EU citizens, even though the powers of the EP are expanded more or less in parallel with those of the Council. Such viability requires a democratically legitimated European government and not just the patchwork of card procedures.



## 1.0 INTRODUCTION

Often when browsing through books on European law and or politics the words ‘architecture’ and ‘harmony’ with regard to the European Union crop up with surprising frequency. It is all too easy to see a group of architects gathered around their drawing boards enthusiastically adding lines and curves here and there and stepping back to admire the grand outcome; with Monnet, of course, leaning over their shoulders and directing pens to the final perfection. The language of the rhetoric of the EU and the concepts used are powerful but based on wobbly assumptions and do not help the observer to consider it for what it is. Take, for example, the concepts of ancient harmony and authority carried by the expression ‘the three pillars of the EU’ as created after the Maastricht Treaty. The concept here is, of the perfect proportions of a Greek temple, dominating the physical, cultural, intellectual and, of course, spiritual life of the Greek city states; implicit is the notion of the birthplace of democracy, Athens. If however the actual political reality of the EU were to be considered, then the highly unequal pillars, two of which, even in the European constitution, show little desire to belong to the rest of the structure, would have to be placed on one side. Which means the ruins of the Greek temples which greet the visitor today, with singular gaunt columns standing at random would be closer to the mark. Maybe a better suggestion would be that the appropriate building concept which the observer will have to content themselves with is not an ivory white temple, but another building of excellent pedigree and definite charm and character, namely, the Aachen Cathedral. This structure has elements of beauty and harmony but, as a whole, it has a makeshift ‘organic,’ feel about it. Please note that in the thesis the word organic is used although biological or natural share the same meaning. The three main parts: choir, bell tower and the central, stocky octagon chapel are bound together by steel bands to prevent them falling apart, much like the European Parliament, Council and Commission. The un-dramatic, central octagon chapel is the oldest and most stable part of the Cathedral and internally, in its proportions, the most harmonious, the other two structures were added on later as required to modernise it. Whilst the subject of Cathedrals is under discussion, it should be pointed out that medieval Papacy and Papal Monarchy will be considered by the thesis as remarkably similar to the EU, and therefore of use when developing theoretical stances and generating certain deductions. The first problem for the observer is to try and remove some of the assumptions and rhetoric, temple columns and porticos to reveal the real building or, for the thesis, organisation.

After the reader moves on from the metaphors and imagery, they are confronted with two more words which appear with curious frequency, ‘bureaucracy’ and ‘idealism.’<sup>1</sup> The two seem to be worlds apart, but a perusal through history reveals that usually idealism turns rigid becomes institutionalised and bureaucratic, ‘routinised’ in Weberian terms. The French revolution to an extent begat the French bureaucratic system; the Russian revolution the Stalinist bureaucracy and the more ancient Papal Monarchy with its equally grand notions and ideals, finally harnessed ideals<sup>2</sup> and bureaucratic power into an unstoppable legalistic machine which dominated European politics for centuries. The fact is that idealism is too vague to be able to govern since daily life is about organising detail. Nature abhors a vacuum, so the saying goes, and vagueness certainly seems to attract detail, and the creators of both, idealists and bureaucrats, seem to be attracted to each other too. Although this relationship can be one of those love-hate relationships tragedies are made of, it is only by controlling government that the i-

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<sup>1</sup> Peterson, J and Bomberg, E. (1999), *Decision making in the European Union*, New York, St, Martin’s Press; p. 11 It is worth noting that ideals have been seen to have always been the motor for European integration

<sup>2</sup> The Reform Papacy opposed traditional rulers with ideals of peace, church reform combined with the efficiencies of educated modern government



deals can be given concrete application. And yet curiously enough the idealists base much of their idealism on rejecting the old system of government, be that the EU and the previous state dominated system, or the secular church system of the medieval period prior to the Papal Monarchy with its vested interests and compromises. It is a sad dilemma that people cannot stand being governed by a bureaucracy without ideals (if a bureaucracy were able to provide effective leadership) nor benefit from ideals without bureaucracy. Thus throughout history idealism and bureaucracy seem to have gone together, as if following a physical law, like the law of gravity; the greater the upward thrust of idealism the greater will be the subsequent downward weight of bureaucracy. Whatever else, usually the mixture of idealism and bureaucracy alone does not lie easily with the basic concepts of a stable political system based on rational dialogue and democratic decision making; the stuff of a modern, workable political system. The Medieval Papacy with its origins in the Carolingian Empire contained the mixture mentioned above and the latter was openly acknowledged to have been a source of inspiration for the European project.<sup>3</sup>

The further problem of idealism is that its often extremely vague, broad goals can hardly be measured; performance is hard to assess if there are few if any fixed indicators on which to base any measurements. This can be beneficial for the idealist organization which can thus evade assessment and subsequent removal from office. Idealistic, vague goals are useful for the creation of such an organization as they cannot easily be challenged or argued against without attracting the label of political incorrectness; if anyone would want to, after all usually the future threats contained in the idealistic organisation are not apparent and ideals are easy to sign up to. The grander the ideal so the vaguer the plan for achieving it; which ensures that the ideal can be and usually must be agreed within a blank cheque form. Ambiguous wording such as the Union has mostly adopted also 'facilitates' compromise in the future.<sup>4</sup> It seems unlikely that political actors of their time, the Monarchs and Emperor in the Papal Monarchy period or the Member States (MSs) of the EU, would have agreed to the plans laid out by the idealists, as they in fact did, had they known what they would mean in practice. That is not to say that idealism and vagueness do not have their place and that ends can justify means. But they have to be handled with care, take the ideal of achieving peace; it certainly occurred and no war broke out in western Europe but that had much to do with the cold war era and with the vast military presence of the two superpowers in the heart of Europe and, of course, later the military alliances of NATO and the Warsaw pact. These organisations removed the ability to decide to go to war in Europe from the European powers, but did not remove the threat of war from Europe. This point was important for Monnet who considered that a state of war existed albeit cold war<sup>5</sup>. So the statement that the EU prevented war and maintained peace is incorrect. But that it was of assistance to the general cause of peace seems equally clear. Monnet saw Germany as the prize that the super powers sought and that the European project should absorb Germany in a sense and remove it from its then prize status.<sup>6</sup> The European project had to help prevent or end the state of war that existed and was in danger of worsening. But it is impossible to state for sure that the absence of hot war in Europe was due to the ECSC or rather to the Mutually Assured Destruction logic of nuclear weapons. The cold war was not unduly affected by the ECSC and the European project and the Berlin wall and Cuban missile crisis happened despite the project. What is certain though, is that the atmosphere of tension that had existed between European states, was replaced by a remarkable cor-

<sup>3</sup> Monnet, J. *Memoirs*. (1978) New York, Doubleday and Company, Inc. p.287

<sup>4</sup> Shackleton M and Peterson J. The conclusion in Shackleton, M and Peterson, J (ed.) ; *The Institutions of the European Union*, (2002) Oxford, Oxford University Press p.353

<sup>5</sup> See note 3 Monnet (1978); p 290 'The cold war, whose essential objective is to make the opponent give way, is the first phase of real war... In effect, we are at war already.'

<sup>6</sup> *ibid* p.291

diality that must be considered to have been beneficial and a positive example for the cold war opponents of what was possible between erstwhile enemies.

Something similar can be said of the idealistic goal of ensuring economic prosperity for Europe. Did the project succeed in that mission? The problem is that of cause and effect, there were many other circumstances in favour of economic regeneration in western Europe at that time; the Marshall Plan for one. Germany may well have been economically successful without the European project as its economy got underway again.<sup>7</sup> After all it had the major reserves of coal and steel needed for its industries, unlike France, which needed German coal.<sup>8</sup> France seems have been in a worse economic position than most<sup>9</sup> and so can be said to have owed a lot of its economic improvement to the European project quite apart from Monnet's modernisation programme. But that is rather different to saying that the European project was responsible for economic improvements for all the MSs. Regarding prosperity gains then, it is most remarkable that the other major sufferer from the Second World War, Japan, achieved economic growth rates which are remarkably similar to those of the nascent EC, or even better. However, economic improvements did occur and with increased inter-European trade came greater trade competition and communication and a positive attitude to other European states. In 1971 there was a return to the levels of trade that had existed in 1914.

Bureaucracy follows its own remorseless logic of increasing specialization, centralisation and fragmentation and complexity, and finally ideals are suffocated.<sup>10</sup> Gaping democratic deficits, popular rejection and growing pressure for reform are the result. The Papacy of the medieval period was finally confronted by Church Councils demanding a more democratic stance, constant crises with the more purely secular powers of the day and an ever increasing distance emerging between the ideals of Christianity and the reality that the bureaucratic machine delivered. The end result was the reformation and split within Christendom; the gradual separation of Church and State and the consolidation of the bureaucratic Papal Curia. Ironically the Papal Monarchy itself had come into being with the goal of separating the Church from the control of the secular powers of the day, only to then attempt to become a major secular political player both in the assumption of power in the Papal States and in the direction of the other secular rulers. The current problems of the EU it will be argued are similar, with similar dangers in store.

It is paradoxical that the stated mission of the idealistic organisation all too soon gets forgotten, as the organisation set up to further its cause gets too involved in its own survival. The Papacy lost sight of its Christian goals or many of them, and struggled for political power with the secular rulers; the EC failed to complete its mission of a single market and in 1965 set out to struggle for political status with de Gaulle. Thirty five odd years later in 1992 after the re launching of the project, the legal framework of the single market was finally in place after many moments when it seemed to have been abandoned. Political power is evidently more attractive to non elected organisations than achieving their self declared missions. It is a curious fact that the EU, despite its declared goals of improving economic performance, has generated vast amounts of regulations to the point that many companies are complaining that they cannot function, 'The EU is a powerful level of governance, and in fact is the main regulator of the most highly regulated societies in the world.'<sup>11</sup> Thus the organisation that set out to achieve an economic mission, then championed the Lisbon Summit to improve the economic performance of Europe, and produced a document which covered a vast range of goals many

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<sup>7</sup> See note 3 Monnet (1978) p.292

<sup>8</sup> *ibid* p.283

<sup>9</sup> *ibid* p.277, 275

<sup>10</sup> As the Medieval Papacy demonstrated

<sup>11</sup> See note 1 Peterson; Bomberg (1999) p.8



of which, only distantly, had anything to do with improving economic growth. The organisation and, in particular, the Commission has had difficulties in concentrating on one task at a time and achieving it. Even to the point where this inability has had negative effects on its main mission. Some of the reasons for this are fairly clear, but one should be mentioned. Organisational logic for the Commission requires the generation of regulation. If for Descartes, thinking was proof of his existence, for the Commission it is 'I generate legislation therefore I am.' Its reason to exist is above all to fulfil its right to initiate legislation for Europe. This is what makes it different and essential in the EU. It is primarily made up of policy making experts and these individuals require policies to make. Policy making is the measure of success in the Commission and one of the sure means of gaining promotion. But this will be discussed in depth later on.

The difficulty for any researcher approaching an only in part completed project is manifold, to work out what the end result may look like; what it was intended to look like and what the basic elements and proportions were and are. Often these are not immediately observable. It is only by use of science and scientific methods that a true picture of the project can be drawn. Engineers place machines and their structures, or elements of them, under duress and run tests on them in laboratories and computer models, much as scientists test substances out in a variety of ways, to increase their knowledge about them and to thus place them in a certain category where they can be related to other substances. Science would look rather odd today if every substance and machine were said to be *sui generis*, an utterly incomparable item unrelated to anything else. That said there are nuances to various scientific branches which can make them more or less useful to other branches which one might not immediately associate with them.

Science, in the western sense, rose from empirical observation of nature which allowed theories to be developed and tested. The natural sciences were thus the first sciences and remain the basic foundation of the scientific tradition. Earlier developments of political science had, under the Greeks, led philosophers to decide that the city state was the individual writ large<sup>12</sup> and that man was basically an animal modified by laws to his improvement.<sup>13</sup> Aristotle voiced the latter view and elaborated on the biological similarities of nature and politics, comparing economic/social classes to an animal's organs.<sup>14</sup> The chain of connection for the Greeks was along the line that cities, and here can be understood all political systems, were fundamentally based on the characteristics of the human individual who was directly related to nature as being an animal with certain political qualities. So the natural world and political systems were directly connected via the human agent. Old news, true, but it needs to be re-emphasised, as modern political science has chosen to locate its claim to being a science, pretty exclusively on being similar to the 'miserable' science, economics. Undoubtedly correct in some senses and a useful method of harvesting 'objective' data with a mathematical feel to it. Whilst this is fine, it does tend to ignore the rest of the natural sciences, and then as a natural corollary the organic world of animals to which Darwinian Theory has firmly attached human beings for the last hundred or so years, essentially agreeing with the ancient Greek view. This topic will be returned to later, but suffice it to say that the thesis considers human beings to belong, in certain aspects, to the organic world and to be as bound to its rules as other animals and organic forms, and bear resemblances to other denizens of it. Political organisations will thus be considered as derivatives of the organic world. As in the organic world organisms rarely just happen, they usually evolve from a previous species or more primitive member of the same species changed in measure to fit the new environment but retaining successful genes

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<sup>12</sup> Plato. 'The Republic'

<sup>13</sup> Aristotle. 'The Politics'

<sup>14</sup> *ibid*

and characteristics; so the thesis will argue that the Medieval Papacy is the organic 'primitive' member of the organizational species that the EU and Commission belong to and therefore a source of useful insights.

Coming to the Commission, the enlargement, the single currency and the ubiquitous Delors inheritance are a splendid opportunity to observe this organisation under stress. Biblically, one might say that its character is being tested, and as St. Paul commented, difficult situations bring out perseverance, form character and allow hope to form. So we might expect from this to see the Commission not only revealing its true character but also developing towards a more optimistic future. Suffice it to say, the main relationship between the enlargement and the Commission, for the thesis, is one of a pressure and huge stress on the latter which allows observations to be made of about it that are most easily made at such times. Diagnoses are made when the patient is ill often as a result of stress, incorrect nourishment and exhaustion and not when they are fit and well

'Looking ahead, the difficulty of reaching agreements at the political level in an enlarged union made it likely that more would be decided at the sub-systemic level within policy networks, many of which could not be expected to welcome actors from New Member States. More generally, eastern enlargement seemed certain to foster intense new battles between policy networks for turf and resources. As Wessels suggested, a plausible future scenario was that "the competition for access and influence among these networks would continue, with intensifying fights over scarce resources as the EU enlarged further."' <sup>15</sup>

What internal bureaucratic dynamics has the enlargement process, combined with the Delors inheritance revealed and exacerbated in the Commission and how have these dynamics affected the enlargement process itself? The Santer reforms and the reforms undertaken by President Prodi were to both remedy the emerging problems and to prepare the Commission for the enlargement. Have the Prodi reforms become part of the problem and added to the seriousness of the convulsion overtaking the Commission? Following on from this, have Commission changes or resistance to them in policy areas affected the enlargement, and what changes has the enlargement forced in the Commission? Have certain structures like policy networks and link ups between them and other internal networks been revealed by the enlargement? A further pressure apparent on the Commission is the growing scarcity of resources available to it, ranging from personnel to policy discretion, its internal organs and structures could be expected to be laid bare than before as they compete for their dwindling supply. And finally, do the Commission and various of its DGs emerge stronger from the enlargement or not? Durable structures and organisations are likely to evolve and develop with a changing environment, rigid ones crack.

The hypothesis of the thesis was initially that some of the DGs would benefit more than others from the increase in work and resources that would result from the enlargement. However this hypothesis could not be completely sustained in the light of the severe restrictions being placed on staff numbers employed at the Commission by the Council, and the vast increase in work that the staff have been required to complete. So, whilst a comparison is carried out, a more appropriate analysis was developed which was to observe and analyse the Commission coping under great pressure, and to see how the various DGs adapted to the circumstances and to explain their willingness to adapt or not. From this standpoint it was only a small step to the realisation that many of the changes occurring, as mentioned above, were revealing certain basic truths about the origins of the Commission, its very nature and likely future development.

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<sup>15</sup> See note 1 Peterson; Bomberg (1999) p. 29



In order to answer some of the above listed questions the thesis first explores the theoretical perspectives available for the analysis and develops its own approach and theory from these. A series of in-depth-case studies of six EU organisations follows, and is rounded off with a summary of the findings and analysis and recommendations. Four European Commission Directorates General (DG) organisational structures;<sup>16</sup> their respective histories and developmental phases in combination with their policy fields make up the bulk of the case studies. The DGs concerned are those of Environment (DG ENV), Enterprise and Industry (DG ENT), Regional Affairs and Structural Funds (DG REGIO), Agriculture (DG AGRI). In this selected DG mix there are two 'paying' DGs, those of DG REGIO and DG AGRI, and one more purely policy making DG in DG ENV; DG ENT lies somewhere in between. The last two DGs listed have been undergoing many changes recently and are of great interest. The anti fraud agency of the Union (OLAF), and the European Environment Agency (EEA) were examined, as both reveal important EU and Commission trends and specific Commission weaknesses.

Over fifty officials in the Commission were interviewed in Brussels as were twenty New Member State (NMS) officials dealing with the relevant DGs. The experiences of the NMS officials were compared to those of the officials in the DGs and explanation found for the problems that they had experienced. In general, recent developments in the Commission's internal organisation were examined and where possible links made to the recent developments in the policy areas of the DGs and in particular where these impinged upon the enlargement. The DGs and Union agencies examined were chosen as they each reveal aspects of Commission work during the enlargement period. Furthermore they are excellent examples of the varying degrees of seriousness that organisational 'pathology'<sup>17</sup> has reached. All the DGs also share certain basic difficulties and common experiences but at the same differ in their responses and the solutions chosen. Further details on the interview process are included in the annex on the subject. A mixed theoretical approach was used in the micro level analysis, whilst for the core theory the theories of McNeill, Mintzberg, the author, and EU aspects of Policy Network Theory were used.

Please note that each chapter's footnotes are numbered separately and that there is a methodology annex. Also the annex to the book includes details about use of certain wording, vocabulary and terminology in the text. There is also a list of abbreviations included next to the annex. Much of the text was completed prior to the completion of enlargement and whilst the tenses have been altered as far as possible, the author requests the reader's consideration for where this did not happen.

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<sup>16</sup> The sectoral 'ministries' of the Commission.

<sup>17</sup> As will be stressed throughout the thesis 'pathology' is intended to stress deviation from theoretical ideals and models, such as Weber's 'ideals'

## 1.1 EXAMINATION OF THE THEORIES

Drawing up a chapter offering more theoretical possibilities with which to ponder on the EU is both a challenge and a must. The complexity of the EU has spawned so many theories that adding more might seem to be rather counter productive. However something quite as multi faceted as the EU requires this. Modesty is the order of the day with analysis of the EU, and awareness that only many theoretical approaches and use of analogies will enable the steady small increments of knowledge which are what are necessary to explain some of the observed phenomena. It is in this sense that the chapter approaches the task and aims to offer a theory to add to the academic arsenal. Analogies are a very useful method of advancing argumentation and Karl Deutsch offered one of the first with the notion of considering the EU as 'a nuclear process.'<sup>18</sup> The theory and analogies in this chapter aim to assist in the general integration of the various theoretical approaches which aim encompass and comprehend the complexity that is the EU and thus add to integration theory in general.<sup>19</sup>

The realm of the EU and its politics has generated a kaleidoscopic variety of theories which appears to fluctuate over time. What they have in common is an awareness of the complexity of the subject which they are addressing. Is it really a well hidden traditional form of government; or one in the making; a hybrid; or a truly unique construct? The best approach seems to be to consider the EU to be a very incomplete, at times contradictory process and governmental creation. Therefore elements of most of the standard theories are helpful and used when appropriate in this study along with some organisational theory. Some theories will play a more secondary role in particular case studies whilst some are more generally used. The basic perspective of the thesis is that the various theories are not incompatible with each other if excessive claims and positions are moderated. Indeed top academics in the field are moving steadily in this direction. The influential so called 'Sapir Report' of 2003 on the Union and Commission, which was requested for President Prodi and compiled from the work of the top academics in the field, stressed that the over emphasis on exclusivity by various theoretical approaches, each claiming to be the most useful, was detrimental to the Union and to understanding it.<sup>20</sup> Instead the report recommended cooperation and acceptance of a mixed theoretical approach to match the policy reality.

For the thesis the neo functionalist theory with its emphasis on a dynamic, evolving, pretty much automatic process, provides some important insights on the process of European integration.<sup>2122</sup> The spillover effect that it describes, with integration in one sector inevitably having effects in another, whose actors will want to enjoy the benefits of integration too and push to have it, is useful. Particularly since the theory expects the Commission officials to be active in encouraging and motivating the actors in such spillovers. The reactive role of the political masters of the officials, namely the MSs, in creating EU structures to constrain the agency role of the Commission is also important. A new group of transnational and supranational officials are created who will want more integration. However, the theory is over simplistic in

<sup>18</sup> Wallace, W. *The transformation of Western Europe*. (1990), London, Pinter Publishers p.28

<sup>19</sup> See note 4 Shackleton; Peterson (2002) p.353; 'In doing so, they have compounded the EU's dizzying complexity.'

<sup>20</sup> *An Agenda For A Growing Europe: Making the EU Economic System Deliver* the so called 'Sapir Report'; Report for the President of the European Commission, (July, 2003), chairman Sapir, A. Group members; Aghion, P, Bertola, G, Hellwig, M, Pisani-Ferry, J, Rosati, D, Vinals, J, Wallace, H.

<sup>21</sup> Haas E.B. *The Uniting of Europe: Political, Social and Economic Forces, 1950-1957*. (1958) Stanford, Stanford University Press, 1958

<sup>22</sup> Lindberg L N. and Scheingold S.A. *Europe's would be Polity: Patterns of Change in the European Community*. (1970) Englewood Cliffs NJ: Prentice-Hall



its conception of the Commission as a single actor and the MSs as being essentially unwillingly forced along the path of integration. The complexity of the EU is not usually amenable for rational actors to rationally pursue their agenda to the full and the Commission cannot be exempted from this.<sup>23</sup> Additionally, it does not explain the internal structure of the Commission as whole and its reaction to the evolving EU situation.<sup>24</sup> Furthermore, the process of integration requires more elaboration and examination and use of analogies to adequately explain more of the facts that have occurred.

Liberal Intergovernmentalism<sup>25</sup> promotes the idea that integration can be explained primarily by use of traditional approaches to international relations, which posit Nation States with the ability to act in accordance with their own national interests and to use the EU as a tool to achieve these. The Commission and other institutions are essentially passive fora for the MSs to make their decisions in. The theory is important to EU research as it re-established the MSs as important actors in the EU who want integration for their own purposes. Certainly behind some of the major historic events of the EU there have been clear national interests playing a major role, as well as the supranationalist ones promoted by the EU institutions, in particular the Commission and European Court of Justice (ECJ). The problem with the theory is that it overly downplays the role and influence of the supranational actors and exaggerates the MSs internal unity as Nation States; which ignore the fact that they, like the Commission, consist of many elements which may be at loggerheads at times. There are also a range of quite disparate MSs which may be more or less willing to act as a coherent group at various times and with more or less sympathy and support for supranational institutions and their ambitions. It also underplays the force of idealism and the integration process itself, which forces decisions in certain directions and limits the rational choice power of all the actors involved to reach decisions reflecting their own optimal position.

Neo institutionalism<sup>26</sup> is important for its insistence that institutions are relevant and their structures and ethos. In particular the theory stresses the role played by what can best be described as institutional behaviour by individuals, who essentially behave as if bound by the rules of formal institutions. Among the insights that the theory has helped generate is that of path dependency, which explains why the results of hard fought bargains by political-bureaucratic actors are liable to be retained, regardless of whether they are beneficial any longer. It is therefore useful in explaining reform resistance in institutions and why the actors mentioned are effectively bound into integratory processes and refuse, or are unwilling to reverse or undo, what has been established and prefer rather to add bits onto the institution. The recent statements of Commissioner Verheugen that senior bureaucrats have been hampering the Commission's anti-bureaucracy reform and resisting any reduction in the amount of legislation support this:

'In a follow-up interview with the Financial Times on Tuesday (10 October), Mr Verheugen said that because of bureaucrats' obstructionism, the commission will this year fail to simplify 54 existing EU laws as part of its offensive against red tape. Mr Verheugen said in an interview with Sueddeutsche Zeitung that the officials, apart from frustrating key reforms, also sometimes "put their own personal perspective across as the view of the commission" in communication with member states or the European Parliament. Dutch finance minister Gerrit

<sup>23</sup> Wallace, W. *Collective Governance in the EU political process* in (eds) Wallace, H and Wallace, W. *Policy Making in the European Union* fourth edition (2000) Oxford, Oxford University Press, p.527

<sup>24</sup> Dimitrakopoulos D in *The Changing European Commission* p.1

<sup>25</sup> Moravcsik A. *Negotiating the Single European Act: National Interests and Conventional Statecraft in the European Community*. (1991) *International Organization* 45, no.1 p.19-56 and Moravcsik A. *Preferences and Power in the European Community: A Liberal Governmentalist Approach*. *Journal of Common Market Studies* 31, no 4 p.473-524 1993

<sup>26</sup> March J.C. Olsen J.P. *Rediscovering Institutions: the Organizational Basis of Politics*, (1989) The Free Press NY, 1989

Zalm and Danish economy minister Bendt Bendtsen on Monday wrote a joint letter published in the Financial Times calling upon Brussels to do more “The commission’s plan was to simplify 54 laws this year, but only five have been tackled. That is alarming.”<sup>27</sup>

Unfortunately neo institutionalism does not provide enough on the informal processes and the potential for individual actors to affect the system.

Network theory, in particular that of Policy Networks makes up for the gap outlined in the last paragraph; the need to consider the informal processes which are so vital to the functioning of the EU. Network theory will be considered in greater depth in the next section owing to its relevance to the theory in the thesis, but the drawbacks of the theory or rather theories which surround Policy Networks are that they are primarily descriptive; they give a fairly accurate picture of how things are, but do not provide a complete theoretical perspective to consider the integratory process from. Thus their deductive potential to generate insights and understanding are limited.

Having outlined the main theories which are relevant but in and of themselves insufficient or contradictory, we will now move on to briefly introduce the theoretical perspective of the thesis and its integrative value. The immunisation theory which will be laid out in the rest of the chapter, complements and aims to integrate the standard integration theories which focus on the expansion of the EU either via a steady increase in supranational competences or due to deliberate MS foreign policy choices. Suffice it to say at this point that the immunisation theory will consider the High Authority - Commission to have functioned in a manner comparable to a Vaccine for Europe and to contain ‘pathological’ qualities (pathological in terms of deviance from certain theoretical norms). Far from denying that the main integratory theories are partially correct, the theory concurs, but since the emphasis of the thesis is on the Commission and explaining exactly how it has and does function, a particular perspective had to be developed and is found in the theory. Unlike most integration theory which emphasises a comparatively smooth progression forwards towards greater unity and union as if these were somehow always to have been expected, and over-stresses the role of supranationalism or MSs as the main integratory force, this theory sees a dialectic progression as having taken place. To some extent this could have been and was planned by Monnet but other elements seem to suggest fuzzy logic at work.<sup>28</sup> Integration is a bit like in a car with the Clutch pedal and the Gas;<sup>29</sup> combined there is movement, apart there is noise and little change but a danger of the engine coming to pieces if left for too long. The gas pedal and the brute force for integration came from the MSs. The Commission - High Authority bring and guide them into gear; neither of the pair represent the brake pedal. Rather than ‘for or against’ integration we have ‘more MS oriented integration or less MS oriented integration.’ The two forces act and react to each other and in general make a common direction possible. The direction is forwards for integration, but it is forwards in a zigzag manner, and the more integrated, immunized and ‘rehabilitated’ the MSs have become the more supranational the whole process feels:

‘One important implication is that a rigid conceptual distinction between ‘national governments’ and ‘supranational institutions’ is unsustainable. On the one hand, national leaders

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<sup>27</sup> Beunderman, M ‘EU officials stand firm after Verheugen attack.’ EU Observer 10.10.2006 - 09:50 CET

<sup>28</sup> See note 3 Monnet (1978); p.267

<sup>29</sup> Hayes-Renshaw, F The Council of Ministers in Shackleton M and Peterson J (ed.) ; *The Institutions of the European Union*, (2002) Oxford, Oxford University Press p. 62. She talks about the Council and Commission being like two horses pulling a carriage, both needing the other.



may become so acclimated to EU decision making that they may appear to act on the basis of “supranational ideology.”<sup>30</sup>

MS leaders act to resolve the perceived need to strengthen European structures, even as they seek to defend national interests.<sup>31</sup> The fascinating result, the EU, has had almost enough democratic elements to avoid total rejection in the modern world whilst encouraging rationality in European politics, economy and society. It still bears the marks of the integration to and fro movement and thus bears witness to the continuing existence of the two main integrationary forces the MSs and their supranational creation. The theory aims to include and not veneer over certain facts like; the positive central role of modified and steadily modifying MSs in the integration process; the fact that most of the institutions of the EU were the result of MS insistence on democracy and not supranational pressure; the increasing importance of sectors and policy networks combined with a decrease in Commission power; the curious organisation of the Commission and the reasons for this. The theory refers to immunisation more than simply a neat dialectic process, as there is a distinctly organic, biological feel about European integration.

A brief digression is perhaps called for here, to answer the European optimist’s objection to a thesis which considers the ‘problems’ of the EU and Commission as opposed to their strengths and good points, the following point should be said. There is a large body of academic opinion which states that there are a range of problems facing the EU and the Commission and they need to be solved. True optimism in the integration process requires realism too and the awareness that problems are present but can be solved for the attaining of the ultimate goals of peace, prosperity and freedom. The Sapir report is clear that, ‘the EU suffers from twin problems: some of its methods of governance are obsolete; and the system as a whole has become too complex and fragmented.’<sup>33</sup> Criticism is also reserved for the EU budget, ‘As it stands today, the EU budget is a historical relic. Expenditures, revenues and procedures are all inconsistent with the present and future state of EU integration.’<sup>34</sup> These academics are right to stress this, as the highly desirable goals listed earlier and healthy political systems, are of greater importance than rigid adherence to organisations and their ideologies which had as their initial justification the achievement of the stated goals. It has to be the case that the mission of European integration and the supranational structures were and are a means to an end and not the end itself. If the end is to be a range of structures, say federal for arguments sake, which reign over poverty, social and political tension and instability and possibly war, which as recent history reveals is still a possibility even in Europe, as in ‘federations’ like Yugoslavia, then most people would agree this is hardly desirable. Wanting change for change’s sake is understandable in elites who do not yet enjoy all the benefits of power that they would like to possess, but this should not be allowed to muddy the real issues of European integration. Sometimes too much loyalty to organisational ideologies can be problematic for the very project they were intended to pursue, ‘Ideas inhibited adjustment in Community priorities and policy, as the enthusiasts of the Commission and the veterans of Community building defended the *acquis communautaire*, and the integration theology of the 1960s against the changing circumstances of the 1970s.’<sup>35</sup> Thus the institutions of the EU must be open to ad-

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<sup>30</sup> Edwards, G and Spence, D. *The Commission in Perspective* in Edwards G (ed) *The European Commission*, (1997) Cartermill, London p.11.

<sup>31</sup> See note 1 Peterson; Bomberg (1999) p.277.

<sup>32</sup> *ibid* p.274; ‘Elite actors who dominate EU decision making have become socialised to a permanent system of bargaining to which they are “locked in”.’

<sup>33</sup> See note 20 Sapir Report (2003) p.125

<sup>34</sup> *ibid*

<sup>35</sup> See note 18 Wallace (1990) p. 81

justment, improvement and even the overall mission itself if this improves the situation of the average citizen.

### 1.1.1 POLICY NETWORK THEORY

Now that the main theoretical perspectives have been introduced it is necessary for us to look at the more relevant ones in greater depth. Two of the theories which also capture the micro level of the European project to some extent, are Multi Level Governance (MLG) and Policy Network theory; both are quite descriptive in character and paint a reasonably accurate picture of the EU as it is. The theory of Policy Networks supports MLG theories by allowing for greater analysis than MLG alone would. MLG can be summarised as a perception that policy is decided by many actors from; industry, civic society and various levels of government, in a policy arena which is steadily replacing the Nation State's more monolithic structure. Within Policy Network theory the Commission and its officials sit at the hub of many of these networks, their choices will be crucial. A useful summary of the various theories relevant to the thesis and a working definition of the policy network are provided by the quotation below by an academic who showed how EC policy networks helped to hinder reform, a point taken up in this thesis:

'A policy network is an organizational arrangement created to facilitate the intermediation between state actors and organized interests. The policy network concept is a meso-level concept. Meso-level analysis focuses on the relationship between government (or EU Directorate-Generales) and interest groups and analyses relationships which are structural rather than personal. Political actors create a policy network when they exchange resources regularly. Any organization entering the policy process is dependent on other organizations for resources. Consequently, they have to exchange resources in order to achieve their goals. Policy networks "may become disassociated from the strategic choices of . . . (the) formative phase and survive as institutional residues of past organizational choices" in such situations, the structure of the network becomes an important determinant of policy choices and outcomes. This is particularly emphasized in the structural policy network approach (the Marsh and Rhodes model) which explicitly states that "the structure of networks affects outcomes."<sup>36</sup>

Networks are considered to offer remedies to several problems which have developed in the, 'increasingly complex and dynamic environment.'<sup>37</sup>They, ' . . . reduce transaction cost in situations of complex decision making as they provide a basis of common knowledge, experience and normative orientation. They also reduce insecurity by promoting the mutual exchange of information. Finally, networks can counter-balance power asymmetries by providing additional channels of influence beyond the formal structures.'<sup>38</sup>They are considered to have become essential and the only means for governance to occur in particular as 'hierarchical co-ordination' has become 'difficult if not impossible.'<sup>39</sup><sup>40</sup>The point about networks offering ways around formal hierarchies, within the Commission context, is examined under the Chapter dealing with Regulatory entrepreneurs in DG ENV.

The importance of EU policy networks is shown by this quotation by a leading academic in the field:

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<sup>36</sup> Daugberg, C. *Reforming the CAP: Policy Networks and Broader Institutional Structures*. In *Journal of Common Market Studies* Vol.37. No 3 September 1999 p. 413, 414.

<sup>37</sup> Börzel T *Policy Networks A New Paradigm for European Governance?* EUI Working Paper RSC No 97/19 p.16

<sup>38</sup> *ibid* p.16

<sup>39</sup> *ibid*

<sup>40</sup> Mazey, S and Richardson, J. *The Commission and the Lobby* in Edwards G (ed) *The European Commission*, (1997) Cartermill, London p.180



'Policy networks are the basic units of European public management. EU policies are not the sole or exclusive responsibility of the Commission they are managed through organisational networks. The effectiveness of networks depends on the ability and willingness of a variety of organisational actors, to work together.'<sup>41</sup> He goes on to add, 'Integration is increasingly a managed process that requires large scale reorganizations of policy networks and regimes.'<sup>42</sup>

Policy networking theories have been applied to help explain actors' motivations by MLG theorists. Various theories applied to the policy networking observed, have emphasized the exchange element via 'exchange logic' which amounts to a, 'mutually beneficial exchange of goods and services' and information resulting in a network where '... the exchange approach aggregates up from the endowments and preferences of individuals.'<sup>43</sup> Others consider the actors 'structural' position in the network to be important, 'the structuralist approach analyses individual behaviour in terms of the structural patterns of relationships.'<sup>44</sup> The role approach of structuralism networks stresses, 'actors develop the sense of their own identities as well as their strategic possibilities through their relationship with others. This role-based approach may be particularly appropriate in institutional settings where networks are often the by products of individual actors fulfilling obligations specified by law, or institutional role, rather than voluntary exchanges. The partnership clause of structural funds is an example of such an obligation.'<sup>45</sup> This perspective then sees networks as, 'structural channels through which political mobilization and coalition building take place and networks themselves become resources in political conflicts.'<sup>46</sup> Dual network theorists stress that there are a wide spectrum of possible alliances to be made by the actors, either the Commission and SNAs against the MSs, or SNAs and MSs against the Commission, with the flows of information and initiative going in every direction.<sup>47</sup>

In general, policy network theory gives the Commission a wide role to play and a crucial one at that, "'... but frequently 'policy networks of like minded actors, often organized and led by the Commission have considerable scope to set the agenda and influence outcomes. In general, as Laura Cram has demonstrated, the Commission and its staff have "proved to be remarkably adaptable,"'<sup>48</sup> and again, 'the Commission has a substantial role in driving the policy agenda, especially at the lowest level of policy decisions.'<sup>49</sup>

The Commission and its officials operate in an environment that invites and encourages network building:

'Commission officials have a constitutional obligation to play a prominent "political" role that is not simply a by-product of their technical expertise or tenure. This power is jealously guarded by Commission officials, though it puts them at odds with their lack of political accountability. So Commission officials are expected to 'shake up' things. The price for the right to be partisan is a loss of bureaucratic integrity. Matters that could be bureaucratic in less ambiguous institutional contexts may easily become politicized in the EU. To a much greater degree than in national environments, the bureaucratic and political worlds are blurred ... The

<sup>41</sup> Metcalfe, L. *Reforming the Commission*, Journal of Common Market Studies Dec 2000, vol.38.No.5. p.828,

<sup>42</sup> *ibid* p.832

<sup>43</sup> Ansell K, Parsons C, Darden K, 'Duel Networks in European Regional Development Policy', Journal of Common Market Studies Vol 35 No 3 1997 p.355

<sup>44</sup> *ibid* p.355-356

<sup>45</sup> *ibid* p.355-356

<sup>46</sup> *ibid* p.356

<sup>47</sup> *ibid* p.350

<sup>48</sup> Stevens, A and Stevens, H. *Brussels Bureaucrats?* (2001) Basingstoke, Palgrave p.223

<sup>49</sup> *ibid* p.221

EU is not a Westphalian state: there is no single, hierarchically concentrated, exclusive core of authority where demands are prioritized . . . Commission officials have to deal with a multiplicity of competences (mostly shared with other actors), principals to serve (most notably the Council, the EP, individual MSs, and the public), demands, and resources (many on loan, others severely limited).the complexity of EU governance compels actors to simplify decision making. That may logically take them in two directions . . . actors make policies jointly, and rather than trying to impose tasks, they coax affected parties to collaborate. In other words, actors are compelled to play a “game” of mobilizing and nurturing support . . .<sup>50</sup>

Not surprisingly Commission officials on the ground are very different from their civil service equivalents in the MSs and are ideal material to make the very maximum from the network potential in the EU:

‘ . . . viewed on the bases of these three features, Commission officials hardly emerge as passive servants exercising a role etched in EU governance rules. Instead, they receive varied and partially conflicting incentives, which invite them to select from the menu what suits best their personal preferences. In Douglass North’s terms, they are purposeful actors in a relatively rule-free environment, seeking alliances with others to form various “groups bound by some common purpose” . . . In the first place, Commission officials work in units with different task descriptions, and these may send signals at odds with the institutional interest of the Commission. Directorate generals are often portrayed as worlds on their own . . . Secondly, even in their immediate work environment Commission officials are less rule-bound than is often assumed. The rules are not always clear cut . . . The organization and task descriptions of the various services change at a high rate. Hence DGs send ambivalent signals to Commission officials.’<sup>51</sup>

Two more quotations from a top member of the College of Commissioners show the power of officials to decide policy:

““The commissioners have to take extreme care that important questions are decided in their weekly meeting, and not decided by the civil servants among themselves. Unfortunately it sometimes happens in the communication with member states or parliament that civil servants put their own personal perspective across as the view of the commission,” he told the newspaper. Citing a concrete example the 62-year old social democrat commissioner said that commission bureaucrats had tried to sort out the use of pesticides between them and the issue only came to the attention of their political masters – the commissioners – when the bureaucrats fell out over the issue. In my opinion, too much is decided by civil servants,” he said in conclusion.’<sup>52</sup>

Another demonstration of the power of officials to decide top policy is as follows:

‘The commission document, on the EU’s innovation strategy, should be adopted by EU leaders in Lahti, Finland, on 20 October – but it was drafted by the commission’s secretariat-general without any involvement of Mr Verheugen who is in charge of the policy area . . . Commission sources told the daily that the responsible official in the secretariat-general did not like Mr Verheugen’s political views on innovation and therefore drafted the paper himself without involving Mr Verheugen’s cabinet . . . In the eight-page commission document, Mr

<sup>50</sup> Hooghe L. *The Commission and Cohesion Policy* in Nugent, N (ed) *At the heart of the Union*, second edition, (2000) Basingstoke, Macmillan Press, 2000, p.104-105

<sup>51</sup> *ibid* p. 107

<sup>52</sup> Mahony, H ‘Commission bureaucrats are getting too powerful, says Verheugen’ *EU Observer* 05.10.2006



Verheugen's key idea to foster innovation through member states' public tenders is notably absent, while commission bureaucrats instead inserted the idea of European technology platforms.<sup>53</sup>

The above points are particularly true of the so called 'Desk Officers' of the Commission; these officials usually enter the Commission services at grade A7 or A8 and proceed up until they are promoted to either deputy Head of Unit A5-6 or Head of Unit A5-A4. They are sometimes referred to as policy-making officials because they are at the forefront of developing proposals for legislation into complete documents ready for adoption. Despite the rhetoric that the Commission political level (the Commissioners) sets policy-making direction,<sup>54</sup> in practice it is very hard to locate the origin of a policy in the EU<sup>55</sup> and it has been calculated that only 6% of policy proposals are generated from inside the Commission,<sup>56</sup> Management plans of the DGs are said to be regularly altered to accommodate the policies generated from below during the period they were supposed to be covering.<sup>57</sup> The majority of proposals are put forward to the DG by NGOs and other stakeholders, lobbyists, MSs, and the European Parliament (EP)<sup>58</sup>; the administration decides, the Desk Officers and sometimes unit heads, which proposals are pursued and passed up to the hierarchy.<sup>59</sup> According to one source over 80% of the final proposal adopted by the Council is the same as that prepared by the desk officer supervising the directive. The same source stressed the fact that the desk officer is alone in the initial process of developing the proposal.<sup>60</sup> The Desk Officers are at the centre of a network of actors coalescing around the directive beginning to be formulated.<sup>61</sup> This last point, stressing the political role played by Desk Officers and the administration in general is confirmed by the statement of Jacques Delors when he said that Commission officials had six professions: to be a law maker, to innovate (generate policy proposals), to control respect for community decisions, to negotiate with the different actors involved in the community process and to be a diplomat.<sup>62</sup> Rarely are national civil servants called on to perform such a combination of tasks, the use of the word 'law maker' by Delors rather than any other phrase appears to place the Desk Officers on a par with legislators and emphasises that their work is political as well as bureaucratic. In the DG the Desk Officers are often the absolute experts in the field of their directive and the Commissioner and their supporting cabinet can only have the very broadest of ideas about the contents of the directives. Allegedly plenty of the management from above the Heads of Unit to Director Generals are often not experts<sup>63</sup> and the higher their rank the more likely it is that they owe their position to factors other than ability<sup>64</sup> and knowledge.

Delors apparently strengthened and enhanced the power of networks in general in the Commission which also benefited the policy networks which had important members in the Commission DGs. There were networks based on nationality 'across the services' and these were 'supplemented' with officials being selected and dropped into top positions in DGs leading to an unfortunate situation, 'the creation of alternative networks, alongside, through and across the formal hierarchies and structures, increased fragmentation and potential conflict and de-

<sup>53</sup> Beunderman M. 'EU officials stand firm after Verheugen attack' EU Observer 10.10.2006

<sup>54</sup> Interviews with Commission Officials SG

<sup>55</sup> See note 40 Mazey, S and Richardson (1997) p.179

<sup>56</sup> Liefferink, D and Andersen M.K. (eds): *The innovation of EU environmental policy*, (1997) Oslo, Scandinavian Press p.49

<sup>57</sup> Interviews with Commission Officials: DG AGRI

<sup>58</sup> See note 40 Mazey, S and Richardson p.179

<sup>59</sup> Interview with Commission Officials DG ENV

<sup>60</sup> Grant, W, Mathews, D, Newell, P, *The effectiveness of EU Environmental Policy* (2000) Basingstoke, Macmillan Press p.19

<sup>61</sup> See note 40 Mazey, S and Richardson (1997) p.179

<sup>62</sup> Spence, D. *Staff and Personnel policy in the Commission* in Edwards G (ed) *The European Commission*, (1997) Cartermill, London p95

<sup>63</sup> Interviews with officials DG REGIO

<sup>64</sup> *ibid* and See note 62 Spence (1997) p.95

creased the scope for good management.<sup>65</sup> Often the hierarchy is ignored or set aside and 'a certain key number of people' secure the 'advancement of the policy', if it were not for this the Commission would not function at all.<sup>66</sup>

Thus the Commission, as Delors left it, was ripe for network activity, and granted that weak political masters result in greater discretion for bureaucrats,<sup>67</sup> in general the way was set for the next ten years, with Networks helping to organize resistance to reforms that occurred throughout the Commission and in its DGs.<sup>68</sup> The problem is that networks do not have to be benevolent to the organization itself, and indeed were and are not meant to be. By their very nature they are brought together or evolve together to solve a specific sectoral problem and to render coherent the incoherent masses of information and actors that would otherwise prevail. The works of several authors show that policy networks, 'tend to be very resistant to change,'<sup>69</sup> "quasi-institutional' arenas with their own structure of conflict and problems of coordination."<sup>70</sup> And they are often pretty undemocratic.<sup>71</sup> Which all in all means 'they cannot fully substitute formal institutions because of their own deficiencies,' although they 'perform functions necessary to overcome deficiencies of bargaining systems.'<sup>72</sup> The ability of policy networks to organize resistance to reforms is attested to by several authors, 'What is often overlooked, however, is that policy networks can have quite the opposite effect by inhibiting policy change and excluding certain actors from the policy making process.'<sup>73</sup> In particular the work of Daugbjerg shows how an Agricultural policy network was able to resist reforms to the CAP for many years.<sup>74</sup> He considers the issue of network resistance to reform in relation to the CAP and states the following:

'When pressure for reform arises, the network members are likely to defend the existing policy paradigm because doing so comes naturally to them, and because radical reforms bring about uncertainty which they want to avoid. Firstly, this uncertainty arises because it is difficult to know in advance which consequences a radically reformed policy may have. In other words, there is a risk of bringing about unintended consequences . . . Secondly; it is unlikely that the network formed around an existing policy survives fundamental reforms. As a consequence, members holding central and powerful positions within the network may lose power when it is redesigned . . . Members of cohesive networks are powerful because they control the expertise within their policy field and when outsiders threaten their control over that field, the consensus on policy principles enables them to meet reformers with forceful counter arguments.'<sup>75</sup>

Indeed this network, or Commission unit elements of it, was discussed by various officials in the Commission and the NMSs with myself, and the results of these interviews are described in the chapter on DG AGRI. The dangers are considerable that policies are being decided by policy networks rather than the Commission as a whole. Policy networks can be "captured"

<sup>65</sup> See note 48 Stevens; Stevens (2001) p.238-239

<sup>66</sup> Hooghe forthcoming quoted see note 48 Stevens; Stevens (2001) p. 175

<sup>67</sup> Hague, R and Harrop, M, *Comparative Government and Politics an introduction* (1987) Basingstoke, Macmillan Education Ltd. p.263. 'Whether the bureaucracy and the military rule or serve depends primarily on the strength of the other institutions in the political system. As permanent and coherent organisations power gravitates towards them unless more overtly political institutions are capable of providing an effective counter weight. Thus bureaucratic influence is greatest where political leadership is weak.'

<sup>68</sup> See note 36 Daugberg, (1999)

<sup>69</sup> See note 37 Börzel (97/19)

<sup>70</sup> *ibid*

<sup>71</sup> *ibid*

<sup>72</sup> *ibid*

<sup>73</sup> *ibid*

<sup>74</sup> See note 36 Daugberg, (1999)

<sup>75</sup> *ibid* p.413-414



and this seems to have happened.<sup>76</sup> It is worth quoting in full the danger related to the above, 'Daugbjerg concluded that despite the increasing urgency of CAP reform, in view of the eastward enlargement and the WTO negotiations on trade in agricultural products, radical reform would come only as a response to a crisis and not as a result of deliberate efforts to steer structural change. If this is a realistic assessment, it has very worrying implications not just for reform of the CAP but for developments in other policy fields. Waiting for crises to occur is a costly and hazardous way of dealing with structural change, especially if the result is turbulence and not reform.'<sup>77</sup>

The notion of a core/periphery dynamic is also useful as it certainly fits many of the facts available. By this is meant that the political entities of the MSs of the EU form the periphery and the EU institutions the core. The core holds an important advantage over the periphery in that here vast amounts of communication come together in Brussels much as all roads were said to lead to Rome. The core is said to '... capitalise its position of a crossroads of streams of communication by linking and combining, by processing that is, the informational components of communications, producing information out of information.'<sup>78</sup> As information can be considered to be a valuable resource, the possession by the core of 'an informational surplus' is quite clearly advantageous in its relationship vis-à-vis the periphery and can be turned into 'political influence'. The example of the CAP policy networks with their Commission members representing important elements of the core using their information surplus to resist reform, is salutary.

One last, major problem of policy networks already mentioned which needs to be re-emphasised is that they are not really democratic; 'The problem is that governance by policy networks is not very democratic . . . '<sup>79</sup> This would not be a problem if they were limited in their scope and accountability existed elsewhere. However as will become increasingly apparent the scope, power and influence of policy networks is a worrying feature of EU governance and the weakness of other sources of accountability means that there is real democratic problem that needs resolving.

### 1.1.2 ORGANIZATIONAL THEORY OF MINTZBERG

The theories relevant to assisting us in understanding and describing the more micro level of EU and Commission reality have been explained, and the negative if not 'pathological' aspects of Policy Networks encouraged by and often with the Commission DGs at their centre. We will now consider two theories which are helpful in analysing the organisation; the Commission, and its relevant parts from an organisational theory perspective. The work of Mintzberg has been used in the analysis section of the thesis to examine the Commission. Since he offers a workable, standard method of considering organizations and analysing them, obviously his work was of great assistance. This was particularly the case when combined with the work of Hofstede who offered an effective combination of his work and that of Mintzberg. To explain the basics of Mintzberg's theory it is therefore right and proper to stand back and let Hofstede outline them:

'To Mintzberg, all good things in organizations come in fives. Organizations in general contain up to five distinct parts:

<sup>76</sup> See note 1 Peterson; Bomberg (1999) p.31; 'EU policy networks may be "captured" by agents who shape major decisions in ways that effectively predetermine them before Member States can "make" them.'

<sup>77</sup> See note 41 Metcalfe (2000) p. 835

<sup>78</sup> Blom. T 'The Multi-level Governance approach to European Integration. Some critical considerations.' Oratie Universiteit Maastricht (2004) p.19

<sup>79</sup> See note 1 Peterson; Bomberg (1999), p.269

1. The operating core (the people who do the work)
2. The strategic apex (the top management)
3. The middle line (the hierarchy in between)
4. The technostructure (people in staff roles supplying ideas)
5. The support staff (people in staff roles supplying services)

Organizations in general use one or more of five mechanisms for coordinating activities:

1. Mutual adjustment (of people through informal communication)
2. Direct supervision (by hierarchical superior)
3. Standardisation of work processes (specifying the contents of work)
4. Standardization of outputs (specifying the desired results)
5. Standardization of skills (specifying the training required to perform the work)

Most organizations show one of five typical configurations:

1. The simple structure. In this case, the key part is the strategic apex, and the coordinating mechanism is direct supervision.
2. The machine bureaucracy. Key part: the technostructure. Coordinating mechanism: standardization of work processes.
3. The professional bureaucracy. Key part: the operating core. Coordinating mechanism: standardization of skills.
4. The divisionalized form. Key part: the middle line. Coordinating mechanism: standardization of outputs.
5. The Adhocracy. Key part: the support staff (sometimes with the operating core). Coordinating mechanism: mutual adjustment.<sup>80</sup>

Amongst the many important findings of Hofstede, we find he makes the justified step of suggesting that Mintzberg's data offers itself to comparisons with his own 'national cultural profiles'

'The link means that, other factors being equal, people from a particular national background will prefer a particular configuration because it fits their implicit model, and that otherwise similar organizations in different countries will resemble different Mintzberg configuration types because of different cultural preferences.'<sup>81</sup>

He describes his particularly relevant variables to measure as follows, the term Power Distance relates to the manner in which people, workers relate to their bosses, is the boss autocratic, paternalistic, do they confer with the workers before issuing decisions? The exact definition provided by Hofstede is 'Power Distance can therefore be defined as the extent to which powerful members of institutions and organizations within a country expect and accept that power is distributed unequally.'<sup>82</sup> Uncertainty avoidance can be defined as follows; 'Uncertainty avoidance can therefore be defined as the extent to which the members of a culture feel threatened by uncertain or unknown situations. This feeling is, among other things, expressed through nervous stress and in a need for predictability; a need for written and unwrit-

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<sup>80</sup> Mintzberg H (1979), Mintzberg H (1983)Mintzberg H (1989) referred to in Hofstede, G. *Culture and organizations: Software of the Mind*. (1991) McGraw-Hill International UK Limited.

<sup>81</sup> Hofstede G. *Culture and organizations: Software of the Mind*. (1991) McGraw-Hill International UK Limited p.151

<sup>82</sup> *ibid* p.27-28



ten rules.<sup>83</sup> Within companies the emphasis will be on rules not being broken, long term careers.<sup>84</sup>

Mintzberg's standard five types can be found combined in some organisations but to combine all five would be extremely unusual and problematic.<sup>85</sup> If that combination is found, combined with heightened levels of internal 'politics' i.e. internal conflict and competition, then it seems fair to say that the organisation has deviated so far from the theoretical norms as to be theoretically 'pathological'.<sup>86</sup> Mintzberg indicates that a strong ideology is helpful in holding together a company and moderating the forces of 'politics'.<sup>87</sup> The thesis will examine how the EU seems to have developed and been developing and to see if this can be considered from a democratic parliamentary theoretical perspective 'pathological', if there are high state of complexity and fragmentation this 'pathology' is no longer just theoretical. It is to be expected that at the core of such an EU, there is an organisation that shows certain theoretically 'pathological' qualities which have played a part in making the EU as it is. That organisation, using Mintzberg's theory, might be expected to also reveal 'pathological' organisational qualities; these can be expected to be found in the High Authority-Commission, the organisation in question. But a 'pathology' can have beneficial effects too, and it will be argued that this is exactly how the Commission should be considered. In many environments a 'pathology' can behave negatively and either destroy the host and or itself, however in a diseased environment it might just do the opposite. It was an essential organisation that replaced and changed a pathological, violent and often poverty stricken European political reality, equipped as it was with organisations and political structures that contributed to the problem, into something considerably better if with some negative elements.

Application of both Mintzberg and Hofstede to the conundrum of Commission organization will offer some theoretical relief to those looking for clear structures or at least explanations for their absence. Mintzberg will be shown to offer a glimpse into the problematic organisational structure of the Commission which strongly indicates its pathological and potentially unstable form, in particular once its mission vis-à-vis its host is over, or at least when it has been temporarily 'arrested' by the host. The concept of the Commission being arrested is discussed later. Thus in the Findings and Analysis section both authors will be drawn on to assist with the intricate task of examining the Commission.

### 1.1.3 ORGANIC MODELS FOR GOVERNMENT; THE WORK OF W. MCNEILL

We have now laid out theories which will help us examine the Commission and indeed the EU layer of officialdom for both usefulness and also their 'pathological' qualities. The next step is to find a theory which examines layers of officialdom and warfare in a manner that enables us to deepen the discussion about 'pathology' and human society in general. An inspiration for the thesis was the work of William McNeill,<sup>88</sup> who made a major contribution to the field of politics and history with his book 'Plagues and Peoples'.<sup>89</sup> He outlines human history and locates two sources of parasitism which have profoundly influenced it, namely those of Microparasitism and Macroparasitism. The former is familiar enough and relates to the many diseases which have afflicted mankind over time and strongly affected his geographical dis-

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<sup>83</sup> See note 81 Hofstede (1991) p.113

<sup>84</sup> *ibid* p.112

<sup>85</sup> Mintzberg H (1989) *Mintzberg on Management: inside our strange World of Organizations*, New York: Free Press p.260

<sup>86</sup> *ibid* p.283

<sup>87</sup> *ibid* p.277

<sup>88</sup> McNeill, W. *Plagues and Peoples*. (1998) New York, Anchor Books p.366. The American historian ex Professor of History at the University of Chicago, President of the American Historical Association in 1985 and winner of the Erasmus Prize 1996; 'an annual award given for exceptional contributions to European Culture, Society, and Social Science.'

<sup>89</sup> *ibid*.

tribution and numbers; the latter is more controversial and covers human behaviour to humans as a whole, and warfare<sup>90</sup> and civilisation<sup>91</sup> are both classified as belonging to this category although obviously one is more benevolent than the other. He makes clear that often the two forms can work together as a whole, although this need not always be the case. For the thesis the use that he makes of organic analogies and descriptions of disease to enable analysis of human behaviour in history is of particular interest. To the reader unfamiliar with McNeill's work a quotation now follows which is illustrative of the book as a whole:

'Before proceeding further with disease history, it is worth pointing out the parallels between the Microparasitism of the infectious disease and the Macroparasitism of military operations. Only when civilised communities had built up a certain level of wealth and skill did war and raiding become an economically viable enterprise. But seizing the harvest by force, if it led to speedy death of the agricultural work force from starvation, was an unstable form of Macroparasitism. Nevertheless, such events happened often enough, and deserve to be compared with parasitic invasions like the African rinderpest of 1891 that also destroyed the hosts in such numbers as to inhibit the establishment of any stable, ongoing infectious pattern. Very early in civilised history, successful raiders became conquerors, i.e., learned how to rob agriculturalists in such a way as to take from them some but not all of the harvest. By trial and error a balance could and did arise, whereby cultivators could survive such predation by producing more grain and other crops than were needed for their own maintenance. Such surpluses may be viewed as the antibodies appropriate to human Macroparasitism. A successful government immunizes those who pay rent and taxes against catastrophic raids and foreign invasion in the same way that a low grade infection can immunize its host against lethally disastrous disease invasion. Disease immunity arises by stimulating the formation of antibodies and raising other physiological defences to a heightened level of activity; governments improve immunity to foreign Macroparasitism by stimulating surplus production of food and raw materials sufficient to support specialists in violence in suitably large numbers with appropriate weaponry. Both defence reactions constitute burdens on the host populations, but a burden less onerous than periodic exposure to sudden lethal disaster. The result of establishing successful governments is to create a vastly more formidable society vis-à-vis other human communities . . . Macroparasitism leading to the development of powerful military and political organization therefore has its counterpart in the biological defences human populations create when exposed to the Microparasitism of bacteria and viruses.'<sup>92</sup>

Part of his broad analysis of human history identifies certain patterns which run together. As with the Papal analysis which is mentioned next; history shows that aspects of the Community project are not new but rather old patterns expressed in modern circumstances. Periods of savage warfare within a certain geographical region have historically given rise to a new governmental system and a large bureaucracy often with a new ideological, religious ethos attached guiding the officials' behaviour. Thus the Chinese wars which ended in 202 BC with the emergence of the Han dynasty saw, 'Internal peace secured by an imperial bureaucratic administration probably diminished the costs to the peasantry inherent in earlier chronic warfare. Yet the Han peace also meant consolidation of a double layer of human Macroparasites upon peasant rice (and millet fields).'<sup>93</sup> Preventing the parasitism from becoming intolerable and maybe thus keeping it working in favour of the peasants was 'The propagation of Confucian culture among imperial officials and private landowners internalized an ethic that strenuously restrained arbitrary or innovative use of power. One critical consequence was to

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<sup>90</sup> See note 88 McNeill (1998) p.72

<sup>91</sup> *ibid* p.111

<sup>92</sup> *ibid* p.72-73

<sup>93</sup> *ibid* p. 100



keep exactions imposed upon the peasantry within traditional and, under most circumstances, tolerable limits.<sup>94</sup> The 400 year reign of the Han showed the success of this balance. Something similar happened with the rise of the Roman Emperors out of the civil wars, and the emergence of an imperial cult with the growing bureaucracy and officials bound to the Royal family, although the peace achieved was more tenuous, and military influence was greater, possibly owing to the previous Republic and memories of it. The major World Wars which wracked Europe and the subsequent growth of an EU bureaucracy geared to ensuring peace are part of the endless pattern of major warfare followed by an ideologically oriented bureaucracy bringing peace. But the EU bureaucracy is still another layer of officialdom<sup>95</sup> and so from the McNeill perspective a 'double layer of macroparasites,'<sup>96</sup> as the following quotation shows when it stresses the extra governance created, 'The EU's existence as an extra level or layer of governance that has been "fused" onto the Nation State.'<sup>97</sup>

We can now stop and take stock of progress so far, Mintzberg's theory categorizes organizations and suggests that some are problematic or, using the terms of the thesis, 'pathological' in their form, McNeill's theory places human governmental systems firmly in the natural biological world, something Mintzberg toys with as well when he discusses the life cycle of organizations and their deaths. In principle some types of organisations seem to start life in one of his five forms and develop but they can suffer from intense internal politics and 'die.' Some adopt another of the five forms which allows them to recover.<sup>98</sup> In order to govern the complex, violent world of the European political environment dominated by Macroparasitical warfare behaviour and powerful, dominant actors the Commission - High Authority had to be a rather new Macroparasite, with a range of capabilities in order to operate in a potentially hostile environment. It would have to be a curious organization, multifaceted, flexible and able to adapt to face new multiple dangers from: national bureaucracies, political actors, lobbyists. It would have to deviate from the 'norms' in order to avoid being quickly recognized and eliminated as 'foreign bodies' would quickly be, and in order to perform its tasks successfully. The examples of the initial Russian Revolution and the attempts by a range of Nation States to eliminate it by invasion, or the similar moves against the French revolutionary state illustrate this. Comparing the Commission to the MSs of the time is like comparing the 'simple' cell in the body with a virus. Mintzberg's theory should capture the uniqueness of form of the Commission in its Macroparasitical glory.

The thesis is in full agreement with McNeill's application of the title Macroparasitism to warfare as a whole, and also to civilisation and develops from this definition a view of the Community project as a very necessary inoculation to prevent any further outbreak of more lethal Macroparasitism in Europe. The full details of this notion will become readily apparent later.

#### 1.1.4 MEDIEVAL PAPACY- EU MODEL

Following on from the use of broad considerations of human politics and history to approach the Community and develop an appropriate theory, the similarities of the Medieval Papacy with the Community are added to round off the theory, as both have behaved similarly and been affected by the points raised in the last three sections and is therefore of interest, and

<sup>94</sup> See note 88 McNeill (1998) p. 101

<sup>95</sup> Van Schendelen, R. *Machiavelli in Brussels third edition* (2003) Amsterdam, Amsterdam University Press p.67 In addition to the formal number of officials in the Commission there is also a large assistant bureaucracy of officials from a range of sources who are involved and employed indirectly in the EU

<sup>96</sup> See note 88 McNeill (1998) p. 100

<sup>97</sup> See note 1 Peterson; Bomberg (1999) , p.5

<sup>98</sup> See note 85 Mintzberg (1989) p.283

since the Papacy is rather more venerable it can also assist in the analysis. The book; 'EU: Papacy Reincarnated?' written by myself, examined the many similarities between the two systems of government and should allow an organic analysis of both to be made, more details on the book are given later. Given that the similarities are present the lessons from the medieval Papal period should be able to provide insights into the younger European project of the EU.

Briefly put, the military anarchy that resulted from the break up of the Carolingian Empire and the invasions of Western Europe by various nationalities resulted in a state of chaos which the Church strove to contain. The weakened Germanic Empire which emerged was dependent on the church to administer what government there was. There was increasing need for new government methods as written laws became important and the old Imperial system with its over-dependence on personal rule by the Monarchs broke down. The Papacy essentially stepped into the vacuum and provided the idealistic, knowledge based organisation, needed to round off the period of instability. As churchmen were the expert, educated government in most monarchies, so the Papacy was in a position of enjoying an information monopoly. Initially a growing layer of church employed bureaucratic experts took over government in the Kingdoms and in Rome, and not only ensured peace but provided the necessary economic impulses needed to revive Western European countries and to allow for their expansion in the near future. Over time the Kingdoms learnt the lessons of government, took over the experts and were able to rule without the Papacy

## 1.2 IMMUNIZATION THEORY OF INTEGRATION

### 1.2.1 INTRODUCTION

Having introduced the main theories that the thesis will use and also the Immunization theory itself, we will now explore the latter in greater depth. In general the EU is a project which proceeds by crises and convulsions. At times it appears almost to have been feverish and facing imminent collapse<sup>99</sup> if not death. Observation and consideration of the literature suggest that the evolution of the EU is just that, an organic process with the evolution of a governmental system. Hallstein seemed to consider that there was a sort of 'automatic endogenous dynamic' which contained 'an in-built logic leading to further integration in Europe; the Commission was given the historic task of pushing for and executing an inevitable "law" of European evolution.'<sup>100</sup> Acceptance of this point and awareness of the work of McNeill, allow the generation of a variety of organic models which can be of explanatory and or illustrative value in analysis of the EU and in particular the Commission. Whilst a range of organic models can be used in the study of the EU,<sup>101</sup> an immunization model is developed by the thesis. It

<sup>99</sup> See note 18 Wallace (1990) p. 81 'Between 1969 and 1979 the European Community...and recovered from the collapse of the plan to launch a more modest European monetary system.'

<sup>100</sup> Rometsch, D and Wessels, W. *The Commission and the Council of the Union* in Edwards G (ed) *The European Commission*, (1997) Cartermill, London p.216

<sup>101</sup> Bacteria are a pathogen which generally makes its host ill not by devouring it as such but rather by generating toxic by products which then make the host ill. A certain amount of toxins may serve to heal and ameliorate another more dangerous illness but too many and the host will be overcome. Legislation is just such a toxin, in moderate doses it is helpful if not vital to the health of a society, too much and rigidity and suffocation can result. It might seem controversial to associate legislation with toxins but following McNeill's linkage of political/military structures and civilisation as a whole to Macroparasitism it is just a further logical step. Laws are negative insofar as they restrict or forbid something usually a certain activity; in excess, of course, they will either lead to no activity or via inflation to themselves becoming worthless and not implemented. The resources which are required to make and enforce legislation are considerable and have to be taken from other activities, probably more obviously productive and wealth generating ones. Certainly there is a balance in society about how much economic activity can be absorbed to deal with legislative activity. It is easy enough to argue that most laws are beneficial in some way, in fact it is very hard to argue the opposite which is why law making has been so successful an occupation. The



uses McNeill's 'Macroparasitical' outline of an immunization process as a starting point; the European project is certainly in accordance with McNeill's theory as a warfare prevention scheme. It is important to stress that the European project is not over, the process is not complete and the same is true of the immunization process detailed below. A further point is that organic immunization is an exceedingly complex field, where the experts are themselves seemingly unsure about exactly how the various organic elements interact and what exactly happens, and thus the field has a provisional feel about it at times although it is an essential branch of medical science.

Several aspects of the work of McNeill examine the parallels between organic disease and human equivalents and consideration of a section of the quotation already provided from his work supports the inoculation idea.<sup>102</sup> The High Authority - Commission functioned like a low level disease, soft warfare, with warfare characteristics. It mimicked the effects of war for MSs with occupation of key industries in competing MSs, and seizure of their economic resources often those with military potential. Other economic benefits accruing to MS governments came via trade. Alliances of MSs would be formed to pressurise other MSs, another foreign policy standard tactic, and to press their causes. Collaboration of competing MS national officials and ministers was openly encouraged by the High Authority - Commission via the engrenage method discussed later. The European project was substituted for war and replaced it, creating in the process a new layer of bureaucrats in Brussels and in the MSs. This was a new layer of civilisation, which carried costs, and a form of Macroparasitism as defined by McNeill, but in more beneficial form. The inoculation perspective of European integration is supported by the essentially positive effects of the European project, from a human perspective, initially at least, rather than the brutal, savage ones that seem to accompany the pure Macroparasitism of warfare. The species of Nation States of the EU, the MSs, were successfully inoculated against the all too frequent plague of warfare which had dominated its history, in its place economic competition generated wealth improvements. Surplus population, the important ingredient for Macroparasitism was initially not present in Western Europe, later it was accommodated by the new economic wealth created.

In order to understand the structure of the High Authority - Commission it is necessary to consider more closely the political-social-economic reality that it was developed in. Then it can be seen as an excellent immunization for a Western Europe worried about war, suffering from mutual mistrust, economic crises, and ideologies. Indeed the confused, pathological state of Europe after the Second World War required a remarkable organisation to remedy the ma-

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EU is the main regulator of the most regulated societies in the world. The result has been in the EU that some legislation seeming to benefit all helped some sectors more than others, and non implementation has increased. This last point, combined with the use of Commission Legislation Impact Assessment procedures to raise legislative standards and the declared goal of the Commission to reduce the amount of legislation currently available, prove that the generation of legislation has reached deleterious levels requiring attention. Statements from the Commission of less but better, and slowing down legislative production, and striving to raise standards reflects the toxin status that some legislation has been having.

Its abundance and wholesale production has much to do with the Commission logic that surrounds it. This has been extensively examined in the chapter on DG ENV and the willingness and ability of officials to use windows of opportunity to get legislation through. Basically, the officials need to generate quality legislation to obtain status and associated benefits in the Commission which itself is most protective of its rights to initiate legislation, and guard the treaties. The generation of legislation seems to be of greater importance to politicians and officials than its actual effectiveness and in the EU case whether or not it has been implemented (Peters B.G. 'Agenda Setting in the European Community' *Journal of European Public Policy* vol.1 no.1 1994 p.21. ....prospects for agenda setting appear to be almost the opposite of the rather gloomy scenario for implementation.' in Nugent, N (ed) *At the heart of the Union*, second edition, (2000) Basingstoke, Macmillan Press, 2000 p.279) Thus MS non implementation is possibly a smaller price for the Commission and its staff to pay than generating less or no legislation at all<sup>101</sup>. Which also helps explain the growing reluctance of DG ENV to over zealously pursue infringement proceedings against the MSs with regard to environmental legislation. One of the results of which could be political and mean the Commission being allowed to produce even less legislation. From a MS 'host' perspective non implementation without excessive penalties is like being immunized against a toxin, there is no reaction to its presence. (Peters B.G. 'Agenda Setting in the European Community' *Journal of European Public Policy* vol.1 no.1 1994 p.21)

<sup>102</sup> See note 88 McNeill (1998) p.72-73

ny negative forces that had dominated the continent. The twenty odd years between the two wars had seen an extraordinary mixing of the political, social and economic spheres which have to be considered in their theoretical 'pathological' enormity, to see the Commission and the EU in a true light. Several Nation States with Democratic Parliamentary structures had come to be dominated by ideological parties, determined to destroy both the Nation States and their political structures; Communists wanted a borderless workers' paradise reached by violent revolution; Nazi's raised up race above everything, even borders, and had not a whiff of respect for 'weak' democratic structures; Italian Fascists wanted a Roman Empire again and not just their borders. All these three had little problem with marching over other people's borders and waging warfare if necessary, ideological ends justified inhumane means. Some Nation States were riven with savage, internal conflict with their respective political-social-economic establishments even contriving at times with the removal of their own political structures as happened with the Weimar Republic. Finally, of course, came the absolute dictatorships, annihilation of internal political dissent and partial replacement of it with bureaucratic - economic division and strife. Economically, depression, inflation, protectionism, corporatism, were the order of the day, finally topped off by national bankruptcy concealed for a time by the Second World War. Tribute and occupation rather than trade were pursued by the European Nation States in their dealings with each other with the German-Italian occupation of France, the Netherlands and Belgium and much of Eastern Europe, and then the German occupation of Northern Italy and finally the allied occupation of Germany and Italy. Vast numbers of workers and populations in general were shipped over borders, along with raw resources in a form of tribute to keep the various manpower starved economies going. In addition of course came intolerance, rampant nationalism, hatred and warfare. After the end of the war came the period of the cold war which was heightening during the period in which the ECSC and EEC were founded. Thus war in its many forms and effects can be seen to have dominated the thoughts of many. The Commission, and High Authority before it, had to have a pretty unique range of capabilities to match the impressively, unique range of deficiencies prevalent in Western Europe then. Thus the High Authority - Commission would be expected to be 'pathological' and deviant from the standard democratic 'norm' to deal with the European political-social-economic scene after the war. The political systems after the First World War had been simply unable to adjust to accommodate the new forces unleashed. Their peoples' pressing needs were all too easily combined with 'new' ideologies which were able to contest with the democratic political systems. The European project would offer alternatives not just opposition to the new forces. It would also provide an alternative to the failed system and method of managing European inter state relations.

A brilliant tactic of the European project was to offer elements of what a majority of the various political, social actors and forces wanted and needed, but not the extremes which were demanded. It immunized Western Europe from the extremes. To those that wanted rational control over resources rather than rampant capitalism and cartels it offered technocratic control of competition in limited sectors. To those that wanted revolution and a new system, it offered gradual, partial revolution and change, steps towards a European utopia. To the war-like competitive instincts of the MSs, it offered trade competition and control (shared) over neighbouring Nation States' economic resources. To Nation State nationalism it offered European nationalism. It brought a mission based, but non violent ideology to cancel out the other more dangerous and potentially violent ideologies; supranationality to cancel out excessive nationalism combined with Nation State anarchy; an emphasis on non political governmental activity to cancel out the political domination of all other aspects of society found under dictatorship; non democratic, but limited bureaucratic efficiency to cancel out the unlimited, destructive bureaucratic efficiency which had finally been plagued by illogical competition in the dictatorships; self serving, rigid, national bureaucracies would be opposed by flexi-



bility and lateral thinking technocrats able to prioritize and so achieve efficiency; trade and competition tinged with corporatism would gradually cancel out the protectionist corporatism of the dictatorships. Idealist, non – aligned, rational individuals would decide politically sensitive sectors rather than politicians and demagogues. The same individuals would offer political leadership for further European integration to balance out the opposite tendencies in MSs.

The analogy most fitting the basic facts and functioning of the Commission and Union is that it is like observing a beneficial ‘pathogen’/ irritant of sorts at work, most likely an organisational immunity jab which was designed for a specific purpose. Examination of immunization techniques reveals that there are two main methods of performing it and they are; Active Immunization and Passive Immunization. Passive Immunization involves the injection of antibodies directly into the organic host and does not require any direct involvement of the host’s immune system; it makes up for the immune deficiencies currently present. It is stated to have a shorter term effect than Active Immunization. Unlike Passive Immunization, Active Immunization creates long term effects by the injection of a disabled version of a real pathogen or elements of it into the host. The host’s immune system is stimulated or provoked to react to the pathogen and to generate antibodies of various forms to destroy it. The immune system retains memory of the essential elements of the weakened pathogen and is able to destroy any sign of the real pathogen on its penetration of the body’s outer defences. Vaccines are, in effect, generating a much modified version of the disease in the host and some are quite capable of producing similar symptoms.

Where the European project is concerned it appears to function as a dual vaccine, with both a Passive and an Active Immunization occurring to the Nation State hosts. On the one hand the Higher Authority-Commission contained most of the antibodies required in a Passive Immunization form to neutralize and provide immediate protection from the pathological elements in Western Europe in the 1940’s and 1950’s. As such it was essential for the survival of the Nation States and democracy. By neutralizing the many dangers to both, the European project ensured their survival; consideration of the work of Millward provides ample evidence that the European project enabled Nation States to survive, deal with internal enemies and reinvent themselves.<sup>103</sup> It would seem that this immunization was expected and intended by Monnet and the founding fathers. On the other hand the introduction of the Higher Authority-Commission with their antibodies, which were also ‘pathological’ from a ‘pure’ democratic perspective and no doubt seemed to some to be rather similar in certain points to the recent regimes many Europeans had suffered under (they could be said to be uncontrolled bureaucratic dictatorships of sorts) then generated, probably unintentionally, a democratic and Nation State reaction. Antibodies were generated in the form of the various other European institutions which then set up to surround and control the ‘pathogen’. This point will be returned to later but the broad concepts need to be laid out now. That Monnet and others expected or planned for a future federal government is probable, quite possibly with similar institutions to those which sprang up when they did, but he did not expect it to happen so organically and quickly. It was certainly a bit unrealistic in a democratic political environment to expect the democratic and Nation State institutional safeguards of the EP and the Council to be missing from the ECSC. Monnet’s final acceptance of institutions like the European Council as being useful and necessary seems to indicate that the project was not totally against the involvement of politicians, if it had to be, only the manner and speed with which their involvement occurred as well as their often suspicious attitude to the Higher Authority-Commission was not expected or desired. Possibly their negative attitude was why they were intended for the end of the project rather than the beginning. But having European institutions like the Council and

<sup>103</sup> Millward, A. *The European rescue of the Nation States*, (2000) London, Routledge



the European Parliament was and is a defence against rabid nationalism and military build-ups. Apart from anything else national elites are forced to work together to contain the High Authority - Commission, and this being forced together to work on a common, collective solution was also one of Monnet's principles. Without the passive immunization, at least in the air as it were, the active immunization would not have been so likely, as it was both occurred.

We can now consider the basic structure of the vaccine itself, the High Authority - Commission, but in particular the Commission, contains a mixture of governmental arms and types of governmental structure which is thought provoking. It is possible to see federal elements quite clearly in its institutions and legal system and consider the Commission to look like a federal executive. Monnet saw federalism as a process of problem solving in which 'elements of federal powers and institutions' were installed as they helped to solve certain problems; higher authority and the Commission were to contain these and deliberately 'lead' the process.<sup>104</sup> This view was held by Monnet and Delors and emphasises the build up of federal power in institutions step by step and the ECSC institutions can be seen as standard federal ones 'pre-figured.'<sup>105</sup> Other authors play down the federal elements<sup>106</sup> but stress that the Commission is certainly political; certainly the Commission of today would need some major overhauling before being fit to be called a federal government. These authors offer four possible roles for the Commission, that it is an: 'Enlightened technocracy'; 'Federal government'; 'Expert and administrative secretariat'; 'Promotional broker'.<sup>107</sup> Whilst accepting that there are or were elements of these to be observed, they state that the Commission is a 'co-player with political ambitions,' to the Council.<sup>108</sup> The Commission is able to be different things at different times and different things at the same time with different political players. This ambiguity is a great strength and it means that the institution has the potential at any moment to act in a different unpredictable manner. With a Hallstein or Delors it can be perceived by some to be a dynamic proto federal government increasing the federal elements of the EU; at the same time under Hallstein the technocratic elements were very clear.<sup>109</sup> After both the leaders came a period when the Commission appeared to be little more than an international bureaucracy. As will be argued all these elements are present all the time, emerging as is possible or required, which is reflected in the ability of Intergovernmentalists and federalists to see what they expect to see for most of the major Treaty conferences. More recently President Prodi is stated to have shown leanings towards the federal model for the Commission; 'The early decisiveness shown by Prodi in declaring the Commission to be a putative government, which led him to locate Commissioners and their cabinets in the same premises as the Directorates-General for which they are responsible - just as ministers in the Member States are based in their departments - has not been followed up.'<sup>110</sup> The interesting point is the wide range of possibilities for the Commission, and that each of these models has been perceived to be present in it, to a greater or lesser extent depending on the author. If the academic audience are ambivalent or even confused about the organisation they have observed for the last fifty odd years then the Council and others will be equally so.

The High Authority - Commission, are in a way, a miniature, complete governmental system folded into one organisation, the vaccine's viral RNA as it were. This gradually provokes the growth of the appropriate governmental arms in the MSs over time, hence the idea of winning

<sup>104</sup> Dinan, D (ed) *Encyclopedia of the European Union* (2000) London, Lynne Rienner Publishers p.231-233

<sup>105</sup> *ibid* p.233

<sup>106</sup> See note 100 Rometsch; Wessels (1997) p.218-219

<sup>107</sup> *ibid* p.215

<sup>108</sup> *ibid* p.235

<sup>109</sup> *ibid* p.216

<sup>110</sup> Kassim, H and Menon, A. *EU Member States and the Prodi Commission* in Dimitrakopoulos, D, D. (ed) *The changing European Commission* (2004) Manchester, Manchester University Press p.100

over the MS officials to be the governmental arms that the supranational brain would guide. Policy networks no doubt being, at first at least, a useful tool in this process. At least one author considers that the national administrations have been fused into the EU framework.<sup>111</sup> Of course, the final complete governmental body, an equivalent of that of a MS or the USA is not present yet, what we have is the gradually forming of a blue print network. Giving things up is anathema to such an organization and indeed against its ethos and mission to accrue political power and competences. On arrival in an unprepared host an infection can expect to have the element of surprise on its side and to spread rapidly with few defences to overcome. The initial sweeping success of the Commission and the Community project reflect just such an advantage. The new organisation, with its blend of idealism and expertise, was extremely adapt at getting past the defences of the hosts and spreading its message or 'genetic code' of Europeanism to the officials and politicians it met. In effect acting like a virus and using the resources of the host's cells to produce more 'European' officials willing to join the project.

The High Authority before and the Commission later were intended by their founders to be the government of the new European sphere of political-economic interaction. The other institutions were added as unintended and at first unwanted controlling factors on the 'true' governmental layer. Both the supranational authorities were called upon to perform a range of activities involving all the traditional arms of government,<sup>112</sup> as the central European governmental layer, generating the legislation and carrying out the organisation needed to perform its tasks, what else could they have done. The current legacy of European institutions which have roles which are not clearly defined enough and seem to overlap, originates in the differing perspectives present in the 1950s, from those who saw the supranational organizations as government enough and those who wanted to add safeguards in a somewhat ad hoc manner.

The notion of the Commission being a compressed, compacted European government in waiting is helpful in explaining a series of paradoxes which have continued up to the present despite the existence of the other European institutions. The Commission is political, legal and bureaucratic and it is hard to separate these at any point. It is political without being democratic and weakly bureaucratic without even remotely shaping up to the Weberian ideal as will be shown. It is as well to consider the definition of the word 'political' at this point, it is defined as 'of or relating to the state, government, the body politic, public administration, policy making etc,'<sup>113</sup> and seems contrasted to the work of administration. By this definition the whole of the Commission is particularly political in the last meaning of the word, 'policy making' and only weakly connected to 'state, government, the body politic.' This is both its strength and weakness, and explains the lack of responsibility which it sometimes seems to show and also its impotence. If the full definition could be brought to bear on the Commission and of course the Union insofar as it relates to the Commission, then it would be healthily political and in the modern era inevitably democratic. The Commission can in fact appear to be, more or less, any of three governmental arms. It has legislative powers, executive ones and even judicial to the point where it is said to have all the trias politica '... it plays the role not just of policeman but also of judge and jury.'<sup>114</sup> It is stated to be the 'executive arm of Community governance, ultimately responsible for ensuring the effective implementation of the policies decided upon by the Council of the Union.'<sup>115</sup> And it is stated to be 'the major EU legislator.'<sup>116</sup> As the guardian of the treaties it is also said to be 'enforcer of Community legis-

<sup>111</sup> Wessels, W referred to see note 23 Wallace; Wallace (2000) p.532

<sup>112</sup> Nugent, N. *Themes and Prospects in At the Heart of the Union* (2000) Basingstoke, MacMillan press p.293

<sup>113</sup> Collins English Dictionary 21 Century Edition (2000) p.1198

<sup>114</sup> See note 112 Nugent, (2000) p.293

<sup>115</sup> See note 40 Mazey, S and Richardson (1997) p.178

<sup>116</sup> Majone 1996 referred to see note 95 Van Schendelen (2003) p.64



lation.<sup>117</sup> Its activities would normally be performed by 'elected politicians' at a national or internal level and not officials.<sup>118</sup>

Some general comments should be made on the Commission's organisational form which can be and has been exceptionally effective for what it was intended to achieve. The Commission has been described as porous and open to the policy-making environment.<sup>119</sup> This could be seen as a weakness when facing well regimented ministries and sometimes this is the case but it has also the virtue of making maximum use of top quality personnel resources. Most of the tasks of the majority of the officials in the Commission reflect the tasks of the organisation as a whole, which explains why it is called a flat organisation by some. Each official (policy making official) represents the Commission in a very full capacity in dealings with the Council, advisory committees etc. They are in a sense mini Commissions, to use the pathogen terminology they contain the full RNA and genetic code of the organisation to spread on, and are empowered, with the Commission's legal position and role and the supranational sovereignty available to it, to make legislation with considerable discretion allowed and to act like diplomats in running and organising dossier networks. They perform, almost exactly, the full range of tasks associated with the Commission itself.<sup>120 121 122</sup> Combined with the Commission's powers they represent the spikes on the virus, perfectly formed, and ready, to dock onto MS governmental levels. The notion of surface area of compounds in physics also comes to mind; basically the greater the surface area a compound exposes to heat or another compound the greater possibility there is of a reaction taking place. Thus sawdust is highly inflammable and a piece of wood less so. If an experiment is to work fast and involve the maximum amount of the other compound or heat, then increasing surface area is paramount. If the Commission had been rigid from the start and only permitted a minimum of interaction between its staff and the policy-making environment then little reaction would have taken place. The sheer openness and loose structure of the Commission has traditionally allowed highly expert officials to fully exploit their skills and at the same time encourage national officials to have full access to them and to share somewhat in this discretion. Monnet's idea of *engrenage*, which is examined later, and having a loose structure for the Commission was perfect to promote fast reactions and in the early days of the EEC this meant fast integration. Of course increasing the discretion of officials is a sensible way of compensating for restrictions in resources, it maximises the possible policy-making transactions that each officials can have. The flexibility and porous quality of the Commission has been extremely effective in allowing the officials to gain large amounts of information from the MSs and other groups and to achieve dramatic tactical moves which catch the MSs off guard; 'This bureaucratic openness is an important cause of the sometimes quite dramatic changes in EU policy as draft Directives are revised following diverse representations from affected groups. This can "throw" national governments as much as it can interest groups.'<sup>123</sup> This point was also discussed in the core-periphery theory mentioned earlier. It underscores the notion that the core, the EU institutions, has to be porous in order to gain the initial input of information from the periphery on which it depends, which then enables, in particular, the Commission to exploit its information surplus.<sup>124</sup>

<sup>117</sup> Usher, J. 'The Commission and the Law' in Edwards and Spence in Edwards G (ed) *The European Commission*, (1997) Cartermill, London p.155

<sup>118</sup> See note 112 Nugent, (2000) p.293

<sup>119</sup> Coombes, D. *Politics and Bureaucracy in the European Communities* (1970) London, Allen and Unwin.

<sup>120</sup> See note 20 Sapir report (2003) p.80; 'The EU can act as a rule maker, a policymaker, a regulator, a supervisor or a facilitator...'

<sup>121</sup> See note 40 Mazey, S and Richardson (1997) p. 179

<sup>122</sup> See note 62 Spence (1997) p. 95 This last point, stressing the political role played by Desk Officers and the administration in general is confirmed by the statement of Jacques Delors when he said that Commission officials had six professions: to be a law maker, to innovate (generate policy proposals), to control respect for community decisions, to negotiate with the different actors involved in the community process and to be a diplomat

<sup>123</sup> See note 40 Mazey, S and Richardson (1997) p.189

<sup>124</sup> See note 78 Blom (2004)



Another important quality that porous materials have is that they have plenty of surface area for bonding to take place on. This explains why materials like clay have traditionally been used to encourage bone formation when repairing fractures or broken limbs, as well as in making the joints of some artificial limbs. So again the openness of the Commission was ideal for building up EEC wide policy networks and finally a governmental layer that could be called a polity of sorts. After a while though, the general rule will be that bone and clay become so intermeshed that their separate identity is lost, the clay served its purpose in helping the body to heal itself.

Another important element in the structure of the 'pathogen' and vaccine is its defences, the most important of which, for the Commission, has been to alter its outer form to that most appropriate to its external environment. When talking about Commission forms, inevitably the topic of its bureaucracy and bureaucratisation crops up. The Commission has, after all, often been criticised for having an extremely old fashioned, archaic, bureaucratic organisational structure requiring reform.<sup>125</sup> If the Commission were dependent on its organisational structure to work effectively and efficiently as the bearer of the supranational idea, then it would indeed need reform. But the archaic elements are part of its identity and in combination with its political elements the key to its being different from MS ministries. For the staff, rigid bureaucratic elements are evaded by using complex internal networks and so as a real bureaucratic control they usually lack teeth, an example being that a communication between staff and management in one DG is required officially to go via the entire process of receiving signatures from the various levels of the hierarchy, in practise a parallel means of communication using e mails is in more frequent use. Under Santer and Prodi the amount of bureaucratic tasks that the officials were required to do by the College soared. A range of bureaucratic reforms began which meant adopting merit based strategies and modern management methods of working. The bureaucratisation seems and seemed to many to be negative and a waste of skilled personnel's abilities but maybe they are not as negative and random as appears to be the case. There seems to be a pattern to Commission bureaucratisation and it recurs as a response to a problematic situation and the reforms show some signs of becoming another feature of bureaucratisation and in the negative sense of word too. There often seems to be superficial bureaucratisation for a period which does not seem to be intended to be complete and total, but rather a survival tactic, but more on that later.

We will now move on from the organisation of the High Authority – Commission to the EU environment in which they were active. Logically enough the EU which the Commission has helped construct and has evidently affected seems to contain several possible governmental systems and their respective structures both implicitly and explicitly. Whilst it seems strange to say that a political system is: Federal, Confederal, a Technocracy all at the same time, this is seemingly the case with the EU. Some authors see federalism very clearly in the TEU;<sup>126</sup> others see the treaty as continuing 'the EEC trend of underlining the role of the Council.'<sup>127</sup> Thus the ambivalence of the central organization has had a knock on effect on the governmental system as a whole.

What becomes apparent, quite quickly, is that the Commission in particular, but also the EU as a whole, by not being clearly any specific type of organisation evade the usual natural controls which would apply at every level. A normal bureaucracy with the Commission's power would have more controls applied to it and be held directly accountable to a political authority; a political executive would be accountable to voters; usually an international secretariat

<sup>125</sup> See note 30 Edwards; Spence (1997) p.17

<sup>126</sup> See note 104 Dinan, (2000) p.233

<sup>127</sup> See note 100 Rometsch; Wessels (1997) p.217

has less powers than the Commission and serves its members more who provide the legitimisation and control. This lack of control permeates the EU and Commission: Weberian control over staff in the Commission by its hierarchy and College is difficult as will be seen; control of individual Commissioners by anybody was particularly problematic and is still so to an extent today; control of the Council and COREPER is equally difficult. Legal recourse is generally available only for actions of the EU not so much in how it is organised and performing although staff can bring cases in it. The whole pattern of the EU and Commission is therefore one of lack of control, in part since no-one is altogether clear about what sort of organisations they are and how they should function. Any control seems to be linked to a limitation of powers or so it is perceived in the Commission. Absence of limitation is perhaps understandable for an organisation which wants to evolve freely and keep its options open, particularly if its future is unclear. As we will see, resistance to reform and control exists at every level of the Commission, and is linked to a tradition of resistance to controls of any sort. In part a healthy suspicion of other institution's goals of limiting the Commission's competences explains this, but this suspicion and actions taken on it, can only lead to suspicion in other institutions, like the EP in the case of OLAF the EU anti fraud agency which was seemingly resisted by the Commission but promoted by the EP. The OLAF question discussed later shows this quite nicely; the Commission ardently resisted any sort of control over its activities, although were it to be a normal bureaucracy or organisation more control would and should be and have been inevitable.

The European project was not meant to be controllable, and certainly not until by a truly democratic European demos.<sup>128</sup> An end, an overall objective, was set and whatever means required would be tried to achieve it.<sup>129</sup> The means would be changed as required and in an extremely pragmatic manner. It was not designed by a politician or a lawyer and it was not intended to function in the traditional manner. It was designed by a statesman with extensive experience in various organisations and business and it was intended to be different, radically different. Usually constitutions are planned and drawn up by lawyer politicians and bear their general characteristics of orderly attempts at making an intelligible whole. Monnet planned the European project and whilst no doubt lawyer politicians and bureaucrats filled in the details the planning and underlying motives were decided elsewhere.

The mixture found of government and tasks in the Commission is 'pathological' from a standard democratic standpoint where separation of powers, ministerial responsibility and accountability are important. From a Weberian perspective it is 'pathological.' Weber saw bureaucracy as being essentially neutral and owing allegiance to the political authority which directed and controlled it, and that this was essential in democratic regimes; the authority was then accountable for the actions of the ministries. A politicised bureaucracy that was its own master would have to be considered from a Weberian stand point to be 'pathological'. Bureaucracies should be there for efficiency of delivery and political legitimacy must come from another source as must overall political guidance. He was fully aware of the dangerous trend that was present in the political - bureaucratic system which would leave the latter more in control of the former than was desirable, indeed he thought there was a degree of inevitability which was rather ominous; 'Weber argued that the conflict between capitalism and socialism must be extinguished by the triumph of bureaucracy, which would prove indispensable for the rational attainment of the goals of any organisation in industrial society. The result would be the creation of an increasingly centralised, increasingly impersonal and increasingly "routi-

<sup>128</sup> Hobsbawm 1997:268 quoted in, Shore, C. *Building Europe: The Cultural Politics of European Integration*, (2000) London, Routledge p. 226. "The EU was explicitly constructed as nondemocratic (i.e. nonelectoral) basis, and few will seriously argue that it would have got where it is otherwise."

<sup>129</sup> Hallstein 1972. p.11 and 295 referred to see note 62 Spence (1997) p71, '...for him the final stage was "full and complete federation."'



nised", kind of authority.<sup>130</sup> The potential power of permanent tenure experts to set a corset around the activities of their shorter term political masters and to indirectly set a political agenda, in the interests of efficiency and the achievement of concrete goals rather than abstract ones like democracy, is present in the Commission, but by itself it could be opposed by equally long tenure experts from the MSs. If however they can be combined then their political masters will have increasing problems. An open porous Commission could encourage a shareholder mentality in MS officials, although over time there would be the danger that bureaucratic divisions in sectors would replace political ones as bureaucracy replaced political power de facto. Ironically a MS official shareholder mentality would force even national politicians along the path of integration, the greater the officials cohesiveness the greater the integration over time. The Union is from a Weberian stand point 'pathological' in its bureaucratic functioning and broad organisation and the organisation of the Commission matches this, only a 'pathological' organisation can be expected to operate in the reality which is the Union. The Commission can also be expected to fall far short of basic Weberian requirements for a bureaucracy in how it functions internally. The first major study of the Commission itself by Coombes showed the contradictory nature of its tasks and the ongoing problems that there have been with it; 'As Coombes pointed out, such diverse roles have demanded different types of organisation.'<sup>131</sup>

There were more capabilities which the Commission needed to achieve its task, but the point is clear; its structure would have to be 'pathological' from a traditional theoretical point of view to achieve its tasks and contain many elements which were probably going to exist uneasily next to each other. So long as its governmental niche was uncontested and the need for it was there, destructive internal forces could be channelled externally and contained internally, but when opposed then its frail unity could well unravel. More fundamentally, an organisation perfectly formed to remedy the bizarre circumstances of the 1950s, which carried out its task remarkably successfully to the point where the 1950s and its own organisation can from a modern stand point be considered 'pathological' and odd, can become a liability in the new environment. Monnet's lateral thinking move of changing the European inter-state environment in which war occurred, from one dominated by politics to one dominated by technocracy and bureaucracy, could finally result in bureaucratic disorders, 'disease,' becoming the rule of the day, with general fragmentation emerging from: sectoral fragmentation, turf wars, complexity and incoherence. There is also a tendency for bureaucrats to generate too much output legislation as a result of their fragmentation; this will be discussed in the chapter on DG ENV.

In order to facilitate the development of the theory we will now proceed to refine the definitions of 'Commission' as the 'pathogen' and 'MS' for the following theory somewhat; what the theorist is observing are snapshots of the state of a process and the latest predominance of one of the two basic ingredients; the Monnet Method located at the heart of supranationalism and Democratic Parliamentarianism (DP), by Democratic Parliamentarianism is meant the traditional governmental structure, rationale and methods of the Nation States in much of western Europe. This somewhat unlikely pair have been considered to need each other and this is the case. And yet they should not, according to a traditional political perspective, exist harmoniously together in the structures that they have formed but rather compete. This has, in fact, been the case and the forces of the Monnet Method and DP have constantly striven to take over the leadership role and DP has sought to return the supranational element to a sub-

<sup>130</sup> Scruton, R. *A dictionary of Political Thought*, 1982 Basingstoke, Macmillan p.46

<sup>131</sup> See note 30 Edwards; Spence (1997) p.5



servient position.<sup>132133</sup> The supranational elements have, not surprisingly, withstood this effectively enough over time. The result of the struggle for dominance is the EU as it is today. No real equilibrium has been reached rather a plateau and abatement of conflict whilst one side or the other regroups. Now the basic actors in the drama, DP and the Monnet Method will be examined.

### 1.2.2 DEMOCRATIC PARLIAMENTARISM AND ITS BENEFITS

Nation States seem historically to, in some manner, generate systems of government which enable them to survive. In the 1930's betrayed by capitalism which had appeared to underwrite them and faced by dissolution in a Communist Eurasian wide revolution, the Nation States and their ruling establishments seem to have been tacitly willing to accept various right wing, or rabidly nationalist, fascist systems of government which sprang up, kitted out with ideologies and a willingness to meet revolution with more violence and 'illegal' methods of suppression than a democracy could have done. Survival required such extraordinary systems and many in the establishments seem to have thought they could use the new systems of government. However like many reflex reactions, which serve in the short term but are problematic in the long term, the right wing nationalist, racist systems of government used the Nation States and, in particular, their economic and military resources to achieve their own survival and agenda. Extraordinary situations maybe required extraordinary governmental systems but once those situations were past, the general rule settled in again, that Democratic Parliamentaryism was the best of a bad lot of governmental systems. In combination with the promise of economic improvements and a European organization to form a bulwark against Communism and Fascism, Nation States reverted once again to Democratic Parliamentaryism. Although it has to be said there was great belief in state planning which Monnet excelled in France with his Commissariat du Plan. Before going further it is necessary to say a few words about Monnet's Commissariat which will be referred to throughout the next chapters.

The Commissariat du Plan which Monnet created to modernize France seems to have served as one of the important sources of inspiration for him in the creation of the ECSC High Authority. The Commissariat's most important goal was to organize the priorities and so the work of the other national ministries. It served to coordinate their efforts and 'to submit to the government "practical proposals concerning France's essential industries and the targets to be attained within a stated time."' <sup>134</sup> It was to be small, flexible and somewhat vague in its detailed operation. It was not to be bureaucratic like the ministries it was organising and it was to be directly attached to the Prime Minister's office to 'command the widest authority'. <sup>135</sup> If it sank down from its almost political leadership level into the melee of ministries then it would have had major problems. The High Authority and Commission, or rather elements of them, have at times adhered to the Commissariat du Plan ethos but not sufficiently, which has increasingly become a problem with sectoral fragmentation. The attempt to replace the elected political authority, which for the Commissariat was the Prime Minister's office which gave the Commissariat its prestige and kept it above the melee of bureaucratic politics, with, in the case of the Commission, the unelected College of Commissioners lacking a political mandate and a weak president, has not always been successful. The Commissioners essentially head sectoral DGs and represent them rather than a common collegial interest. There often seems to be a lack of the overview and ability to prioritize that the Commissariat strove for. In fact the

<sup>132</sup> De Schoutheete, P. *The European Council* in Shackleton M and Peterson J (ed.) ; *The Institutions of the European Union*, (2002) Oxford, Oxford University Press

<sup>133</sup> See note 30 Edwards; Spence (1997) p.2

<sup>134</sup> See note 3 Monnet (1978)p.239

<sup>135</sup> *ibid* p.240

College has not proven to be an effective equivalent for the French Prime Minister's office on which Monnet's previous organization had so depended. But more on that later.

In general, democratic systems of government seem to generate better quality decisions than others. Even in war this seems to be the case, consideration of the Second World War showed the inability of a dictator to take the best decisions in a sustained manner for his country, in fact often they took the worst. Ideology rather than rationality was allowed to dictate all governmental action in the dictatorships. The superiority of DP presumably lies in the requirements of accountability and the need to achieve re election, which refine politicians' thinking and assist them in distilling out the tendency to over vagueness and grandness that they along with rulers over the ages share. After all, democratic parliamentary government in Britain at least grew from the Monarch's chamber of advisors who were often the more powerful nobility and better educated churchmen. In order to carry out grand schemes such as Monarchs and aristocrats from the Roman Empire onwards have relished in order to win glory, and renown, first parliamentary and then democratic parliamentary government forced budgetary tags and limits onto rulers activities and so onto the rulers themselves and their administrations (budgetary limitations, such as they are, are something the Commission has been very able to get around and this needs to be altered).<sup>136</sup><sup>137</sup> This is not to say that democratic systems are not capable of making terrible decisions, but within parliaments and systems of checks and balances, there are going to be more powerful actors who must be persuaded to support the scheme than in despotic governments. A pleasant side effect is that the need to persuade widely, acts as a unifying force in a political structure so that the scheme cannot achieve sufficient support without also creating a more unified, coherent governmental coalition. A political system only distantly or not at all related to democracy or at least representative democracy seems likely to make bad decisions in an ever increasing number until the system itself collapses.

An important doctrine of DP is the separation of powers, and following as a corollary from this well-honed doctrine is the dominance of the political head over the bureaucracy of the state; both have been basics in political theory and proven their worth as a simple and effective recipe for political stability and accountability. The doctrine conceives of the various branches of government holding the others in check; they are in a sense in limited competition. Often the balance of power between the powers of the various organs of government is closely defined in a document like a constitution with a related court to interpret and apply the rules. Clearly designating the governmental roles and competences is important for the balance of power and the clarity of the governmental organisation. It helps maintain transparency and hierarchy between organisations and ensures that the various actors behave according to their defined position. Such clarity prevents or at least limits informal structures emerging which are opaque and allow bureaucrats and politicians a 'good' which they value, unobserved application of power without accountability. The EU, according to some observers, deviates from this clarity and accountability.<sup>138</sup>

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<sup>136</sup> Majone G. *Cross national sources of Regulatory Policy Making in Europe and the United States*, Journal of Public Policy Vol.11(1) 1991. p.96. "Any satisfactory explanation of the remarkable growth of Community regulation must take into account both the desire of the Commission to increase its influence – a reasonable behavioural assumption – and the possibility of escaping budgetary constraints by resorting to regulatory policy making."

<sup>137</sup> The Commission during the 1990s employed large numbers of 'officials' external to the Commission itself, using various obscure budgets, and so got around the staff limitations set by the other institutions

<sup>138</sup> Booker, C and North, R. *The Great Deception* (2005) London, Continuum, p.70



'EU decision making . . . is primarily intergovernmental. It is dominated by national interests and allows governments to "escape" from pesky domestic pressures that limit their room for manoeuvre at the national level.'<sup>139</sup>

Within a ministerial sector, a minister and related bureaucrats can enjoy Prime Ministerial status unless curbed by a cabinet which is itself restrained by other organs of government demanding transparency and accounts of how and why decisions were made. Patronage and the use of power to build up alternative governmental structures and to benefit personages blossom in opaque systems to the detriment of the economy and society as a whole. Parliaments should, first and foremost, be protecting the voter and not a lobby; they are paid to do just this by the voters and to manage the taxation funds the voters put at their disposal for the achievement of stated collective aims.

The notion of some balance of power and separation of powers being essential for a healthy functioning political system, is mirrored in the realm of economics with both horizontal and vertical integration of industries being eyed with considerable care if not concern, as there is a natural propensity of economic actors to want to control those companies which compete with them whether in the same or another sector to themselves and thus decrease risk, transactional costs and increase stability. The final stage of this tendency is the monopoly situation which whilst it can offer certain advantages to certain consumers is not perceived by national legislators to be helpful for the majority. A healthy economic system is considered to be one in which the companies' natural tendency towards developing a monopoly or oligopoly structures are curbed. The domination of all the sectors relating to a given product by a single firm can be dangerous,<sup>140</sup> unless it is amply compensated for by horizontal competition and ease of new company entry into any of the sectors being operated in. The EU has been labelled by some influential academics; 'a cartel of elites'<sup>141</sup> running a system of policy making which is 'a costly' and 'time consuming',<sup>142</sup> 'elite process',<sup>143</sup>; these last points can be considered signs of inefficiency. It is generally considered that ideal levels of competition within certain constraints are desirable for a healthy economic system. In summary, monopoly situations usually benefit the monopolist at the cost of the end user, be that a consumer or voter. Would-be monopolists yearn for such situations which minimise their costs but raise the costs for others. Oligopoly exists currently in the EU as the cartels quotation indicates and this is a major step towards the monopoly position. A certain level of competition exists between officials but there will be and is a tendency towards collusion and monopoly, to the benefit of officialdom.

This is not to say that all checks and balances are a good thing and that they cannot lead, in excess, to difficulties. The USA has a refined system which is so elaborate and pervaded with so little trust that it has spawned vast numbers of committees and encouraged lobbying to such an extent that the democratic will, at times, appears to be somewhat lost in the labyrinths of power. But in the American system limits are set and the executive is held responsible and the bureaucracy held in some form of check. Whilst it could be argued that size leads to complex structures of government, many of the US complexities were chosen and imposed in order to balance the system. This lack of trust in a central government and the executive also exists in Europe, and helps explain the contorted system of government but with a crucial difference; the EU complexity has evolved and is evolving seemingly without a plan or necessarily a democratic will. The complexities of the US system were planned to ensure democratic

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<sup>139</sup> See note 1 Peterson; Bomberg (1999), p.7

<sup>140</sup> Section 4 of the "U.S. Department of Justice Merger Guidelines," June 14, 1984 <http://www.usdoj.gov/atr/public-guidelines/2614.htm>

<sup>141</sup> Paul Taylor and Ralf Dahrendorf referred to see note 23 Wallace; Wallace (2000) p.533.

<sup>142</sup> Van Schendelen, R. (1998) see note 23 Wallace; Wallace (2000)

<sup>143</sup> *ibid* p.533



control of the central government, the EU complexities are responses and only sometimes of a democratic nature and only sometimes curbing the executive at times it appears to be rather enhancing its power.

Whilst it could be argued that complexity is in the eye of the beholder much like beauty and that the insider is unlikely to find the EU complex whereas the lay man will: this seems to miss the point; the complexity of the EU is not useful for the creation of a demos, such as the EU seems to need to win referenda on treaties and constitutions. Nation States in their relationship to their citizens are often rather simplistic, at least superficially, encouraging primitive patriotism and emphasising belonging to a nation rather than anything else. That is what the EU has to learn to do if it really desires to be a government or if the MSs wish to turn it into one. It must simplify to unify and encourage the European peoples to identify with it as a demos. To wantonly appear complex might appeal to a few in the know, and offers them a sense of exclusivity, but for an organisation that desires to have a demos, to be appearing complex and opaque means it is doing a rather a poor publicity job if nothing else. In general in life, if it is possible to consider something simpler that does the same tasks, and it certainly is where the EU is concerned, then it is often better. Why choose the complex option, unless of course there are vested interests involved and certain individuals are unwilling to make the necessary changes? Whatever else, complexity in government and contorted paths of accountability are not beneficial for democracy.

In DP governmental systems, the ministers in power are either of the same party or have formed a formal coalition often in a contract form with stated goals, competences and the means of achieving them laid out. At a very minimum they share the same training, nationality and often work experience in national ministries. They run for power on a manifesto with clearly stated goals and related arguments, winning the support and backing of the electorate for the right to govern for a fixed period with the prospect of constantly defending a track record. An MS cabinet will usually consist of the victors intoxicated with the euphoria of success and the need to perform and live up to expectations; and this is fundamental for the formation of collegiality. Party political manifestos need to be more concrete than purely idealistic statements of intent. Democratically elected governments have a four or five year term in office to help concentrate their thinking and which forces them to select enough goals in which they will be able to succeed, in order to persuade the electorate to re elect them. The official opposition, also made up of elected politicians, will be offering an alternative programme of government and an alternative perspective usually critical of the work of the current incumbent of power. This opposition is usually vocal and well informed and broadcast via the media to the electorate during the period of government as well as during the election period. The effect of these elements quite apart from the parliament as a whole combined with: party grass roots, the judiciary, a constitutional court and a conscientious civil service which leaks if required, is to force policy selection onto politicians and coherence and unity to the government and an awareness of responsibility. There will be failings, ridiculous projects may well be agreed upon, but they will be fewer and less permanent and insulated from change than in a non democratic system.

An often overlooked benefit of DP is that opposition to the government is built into many, if not all, parliamentary systems. In the UK system the opposition are paid by the state to run a counter government as it were and to thus keep the current incumbents of power on their toes. Having a formal opposition allows for criticism to be aired and debated and encourages informed public discussion on a range of subjects. The discussion is then expanded by the many media correspondents. This forces the government to close ranks and coordinate and control their ministers to avoid unpleasant surprises in question time and subsequent embarrassment

in the press. The public are involved in the debates and kept informed about alternative approaches to dealing with the needs of the country. 'Facts' are shown from a range of perspectives and given a range of interpretations as should be the case. The post modern world has bestowed one good at least on European culture and that is scepticism about 'facts' and their stated objectivity. The many facets of facts can be better approached by the wholesaler dealers in them rather than their believers. For every 'scientific fact' that is relevant to the government and requires regulation there is likely to be discussion about its scientific validity and there will be other views about its applicability and, of course, its relationship to other 'facts' which may well alter its perceived status and relevance and the opposition stresses this. Parliamentary opposition, however imperfect, deepens policy debate, understanding and coherence as well as reducing the likelihood of abuses of power. One last benefit of a parliamentary opposition is that opposition to government can be kept to a large degree within the confines of the parliament and regulated. Voters whose party has lost one election know that their views will be heard in the parliament and that there is good chance that they will prevail at a later date. This lends inclusive and representative legitimacy and stability to the system. Quite apart from anything else opposition to the current government and the policies which are connected with it, which could be essentially negative by its very definition, is effectively channelled through the parliamentary opposition and into the creation of a potential new government, quite literally practising governmental skills and waiting for future election. Public opposition is thus recruited via the parliamentary opposition into opposition to the current government and not the system as a whole. Elections are not held to decide on whether or not to keep parliamentary government but rather as to the selection of policies and choice of personnel.

The actors and their competences in a parliamentary system of democracy are reasonably easy to identify for the public and the other organs of government. Ministerial responsibility encourages identification with a particular decision both for convention sake and for prestige, quite apart from duty. A minister will be allocated a policy to decide on, even an unpopular one, and be identified with it. Since power and related competences are much valued articles and competition for resources intense, encapsulation of ministries, ministers and related officials is a natural tendency and a real danger. Dual or more constituencies will be pressing for the minister's attention and motivation: officials, lobbyists and of course the voters and the democratic mandate as contained in the manifesto. It is all too easy for self contained sectors with related ministries to operate alone for defensive purposes, and to engage in turf wars with others to detach competences from them whenever possible. The results can be corruption and lack of governmental cohesion, efficiency and effectiveness and also often coordinated policies. Some personal risk and responsibility for public office is essential. Quite apart from anything else it is desirable for certain actors to be allocated the right to decide some issues and not others, and so to keep a politician making maybe an imperfect and ill considered decision with a democratic mandate, rather than a higher quality maybe more effective from a sectoral perspective decision being reached by a bureaucrat alone. It is quite likely that more efficient and effective decisions can be generated for a particular sector<sup>144</sup> if the 'buck stops here' principle of ministerial signature is ignored and bureaucrats working closely with stakeholders simply generate decisions and policies for themselves and manipulate political mas-

<sup>144</sup> See note 3 Monnet (1978); p.235; 'In their separate areas, the civil servants had worked very well, each doing his best to develop that sector of industry for which he was responsible. But while they had incidentally consulted a few industrialists, they had not collated their respective inquiries, with the result that their plans were neither well coordinated nor ranged in any order of priority. On the contrary, all were competing for the same limited resources of energy, manpower, and foreign currency, which at this rate would soon be exhausted. People in different administrative departments or different branches of industry spoke to one another, but their respective intentions remained secret and uncoordinated. Everyone was entrenched in his own position.'



ters from within Policy Networks.<sup>145</sup> However, democratically reached decisions have their own effectiveness and whilst maybe less sectorally effective and efficient are often better for the body politic as a whole. Thus, ably run parliamentary democracies with a centralised cabinet based around a Prime Minister or equivalent and clear lines of actor accountability and power allows for coherence, coordination and policy prioritisation.

Rational choice literature alleges that the goals of the executive or rather the ministries are to increase their budgets and power often vis-à-vis their fellow ministries and that the legislature has to check this growth. Also officials seem to desire to maximise their policy discretion and proximity to power and related 'goods'. It seems fairly obvious that the executive, the ministers, will also desire to maximise their ministries' power and prestige and thus their own. The rounds of budget negotiations and thus resource increases and decreases will be performed by the ministers usually striving to increase their ministries' allocation; a better more powerful ministry is good for ministers' careers too. Accountability for the budget spent and the performance of their officials will force a degree of control on the growth of bureaucracy and related budgets, unchecked the growth appears to be limitless. Ministries can always find more work to do and more ways to spend money. The more control that the parliament has over the executive and over its budgets, the greater the limitations placed on the growth of the bureaucracy and its output. Transparency rules such as exist in Scandinavia empower the media and the citizens to apply pressure to the parliament and also the executive. These societies are, unsurprisingly, said to be the least corrupt; those that champion governmental secrecy often have a less savoury reputation. A basic rule seems to be that an information empowered public and active parliaments using budgetary and accountability tools are the democratic solution to excess bureaucracy, bureaucratic growth, myopic ministries and the symptoms of bureaucratic disease ' . . . such as internal conflicts, problems of coordination and a lack of strategic direction.'<sup>146</sup> This restriction has been evaded by the Commission.<sup>147</sup>

Where bureaucracy exists it equally needs to operate within a set schema in order that the various elements of which it consists remain in a healthy balance and in optimal working order and do not become 'pathological'. The elements spoken of here are: superior knowledge and expertise, networks of governmental contacts, safe tenure and top quality policy making individuals. These elements make them excellent alternative governmental material to the politicians who are intended to head and set the policy for the bureaucrats. The notion that bureaucrats know best what society needs and really wants may or may not be true, but it is certainly a view held by many and is dangerous for any non Platonic system of government. It is at odds with reality to conceive of bureaucrats as being neutral and more balanced than the majority, they are more sectorally expert maybe but not more neutral. In fact, many have quite distinct views about how society should be run which are both ideologically and sectorally oriented. Setting that misnomer to one side for a moment, the Weberian view which sets out ideal versions for organisational forms should not be set aside lightly and they are quite clear about the healthy schema for the machine which is the ideal bureaucracy. The bureaucracy should be tenure and merit based and answerable to the political leadership which consists of quite different individuals to those in the ministries. The political leadership make the decisions and set the direction which the bureaucrats then put as efficiently as possible into effect.

<sup>145</sup> See note 1 Peterson; Bomberg (1999) p.31; 'The EU's treaties are astoundingly vague. Links between societal interests and EU decision makers ('agents') are weak in the absence of traditional structures-such as strong political parties-for aggregating interests. EU policy networks may be 'captured' by agents who shape major decisions in ways that effectively pre-empt them before Member States can 'make' them.'

<sup>146</sup> Donnelly, M and Ritchie, E. *The College of Commissioners and their Cabinets* in Edwards G (ed) *The European Commission*, (1997) Cartermill, London p.45

<sup>147</sup> See note 136 Majone (1991) p.96



Bureaucratic methods of doing business in general and that found in the EU do not seem amenable to accountability that should belong in the political sphere.<sup>148</sup>

No system is perfect but in an economically sound, stable, inter-European MS system made up of democratic parliamentary systems seems to be the least dangerous and negatively charged of those available, and secures a modicum of freedom and safety for the citizen and stability for the governments which can be held accountable and at the same time enjoy legislative freedom for a set duration. Via a neutral civil service sensibly deployed, the same governments can secure their legislation from future tampering by bureaucrats and future governments. The political masters hold the bureaucrats accountable and decide the policies to be followed for which they have been voted in by the populace. A useful summary of the two systems of government<sup>149</sup> is found in the following quotation:

‘National representative democracy rests on a set of institutions and practices that includes regular elections, freedom of speech and the press, the right to vote and run in elections, constitutional guarantees about the conduct of executive power, and the accountability of governments to their electorates largely through national parliaments. Political accountability is the EU is highly problematic. The EU has a very fragmented and opaque range of highly complex decision making rules that gives rise to a weakness of accountability. European law emerges from discussions and negotiations within myriads of advisory and working committees surrounding the Commission, working parties of the Council of Ministers, European Parliament committees, and inter-institutional dialogue. Informal politics and backroom deals characterize the process.’<sup>150</sup>

More details about how the EU deviates from DP principles will become increasingly apparent through the thesis.

### 1.2.3 THE MONNET METHOD INOCULATION

Now that we have described the benefits of the democratic parliamentary system we will consider the Monnet Method. The Monnet Method is here defined not only as the deliberate, stealthy promotion of spillover from one sector to another but also of engrenage, technocracy, functionalism and, all in all, of the breaking down issues, problems and governmental structures.<sup>151</sup> At times it is a ‘negative’ process of fragmentation somewhat along the lines of divide and rule. Breaking problems and organisations down into their constitutive parts is essentially ‘negative’. The removal of the means of waging warfare by effectively occupying the prized coal and steel sectors of the MSs was also ‘negative’. And yet ‘negative’ only in the sense of the removal or breaking down of something, from the bureaucratic point of view breaking problems down into rational solvable pieces, is normal enough and efficient and it was just this efficiency that Monnet aimed to exploit combined with the effectiveness that a sense of mission provided. Engrenage is effectively the same as collaboration with an occupying power; something which had proven to be very effective and easily enough done in France under Nazi occupation, only this time it was for a positive reason.

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<sup>148</sup> Page, E. *The People who run Europe*. (1997) Oxford, Oxford University Press p. 162 ‘The problem of identifying responsibility and generating accountability results more from the need to mobilize support from representatives of member states in diverse, but predominantly bureaucratic, arenas of decision making. While it is not possible for EU policies in reality to “emerge from nowhere” as Mazey and Richardson (quoted in McLaughlin and Jordan 1993: 129-30) put it, the fact that they may appear to underlines the special difficulties of identifying responsibility in Brussels.’

<sup>149</sup> See note 23 Wallace; Wallace (2000) p.528

<sup>150</sup> See note 104 Dinan, (2000) p.325

<sup>151</sup> See note 62 Spence (1997) p.98

The Monnet Method basics involve fragmenting a political issue/problem and the related governmental organisations which could not be agreed/agree upon to one until a situation is reached where the circumstances and details which generated the 'problem' dominate and can be solved.<sup>152</sup> Usually the individuals who are best with details, technocrats, can and will decide. Functionalism follows a similar logic and was one of the main intellectual strands of the Method which 'preferred' fragmentation on the whole.<sup>153</sup> Usually the issue would thus be removed from the political sphere to the technocratic. Whilst this had the admirable goal of dodging political stalemate, it is important to note that the detachment of the detail from its place as part of a understandable if simplistic entirety, to one of existence in a mass of details of infinite complexity is, once again, essentially a 'negative' action. It involves the breaking down of an entity into its parts, with the well meant goal of enabling agreement. It also results in serious problems of sectoral fragmentation:

'The highly technical content of EU policy reinforces fragmentation at the sub-systemic level. The problems of trying to construct an EU rural policy in the face of the competing agendas of CAP, cohesion and environmental policy networks is indicative. Even in trade policy, where the EU has clear incentives to speak with one voice, battles are rife between trade and agricultural policy networks and their "sherpas"'.<sup>154</sup>

Recently the Commission has seen a combination of increasing power devolving to the sectoral DG top bureaucrats, more technical detail dominating and arrogance on the part of the bureaucrats as the following quotation shows:

'In an interview with German daily Sueddeutsche Zeitung, the German commissioner in charge of the important industry portfolio said "the whole development in the last ten years has brought the civil servants such power that in the meantime the most important political task of the 25 commissioners is controlling this apparatus . . . The commissioners have to take extreme care that important questions are decided in their weekly meeting, and not decided by the civil servants among themselves . . . Noting that the way some commission officials communicate is technical and arrogant, which he finds "appalling", Mr Verheugen said that only a "change in political culture" in the commission would improve the situation.'<sup>155</sup>

It must be emphasised that the EU was deliberately fragmenting in its activities and fragmentation is not just an unfortunate side effect of growth but rather a deliberate choice and means of action; 'Functionalists *prefer* fragmented networks, developing common interests within limited fields . . .'<sup>156</sup>

The process of conflict between the Monnet Method and DP is particularly problematic as the two are different in goals, methods and actors. The goal of democratic politics has been to cumulate issues and details into entire policies and then manifestoes, and party programmes which can be used to trade with the voters and find popularly supported solutions via the election process.<sup>157</sup> The Monnet Method sought to replace this with a trade in details between technocrats. It raised up the technocrat and inevitably the executive, in particular the officials in it, at the expense of all the political representatives and, in particular, the parliaments. This is the less promising aspect of Monnet's Method and goals, that he was in favour of a federal Europe, and a democratically elected one, seems clear, but he did not seem over concerned

<sup>152</sup> See note 3 Monnet (1978); p.291

<sup>153</sup> See note 23 Wallace; Wallace (2000) p.528

<sup>154</sup> See note 1 Peterson; Bomberg (1999) p.269

<sup>155</sup> See note 52 EU Observer 05.10.2006

<sup>156</sup> See note 23 Wallace; Wallace (2000) p.528

<sup>157</sup> See note 1 Peterson; Bomberg (1999) p.31



about formally specifying the DP elements that would be necessary and when they should be included. Presumably because these were expected to just happen at some point in the future when the project was so advanced that they had to be enacted. The result is that the EU does not just include less democratic elements but rather is founded on their predominance and considers them a virtue.<sup>158</sup> Fragmentation of government in Western Europe was deliberate and intended '... the Commission has created and captured a whole new level of pluralist politics in Western Europe and appears in a para-governmental light.'<sup>159</sup> As will be discussed later some degree of resulting confusion can or at least should have been expected to have resulted. Monnet would appear to have had ambivalent feelings towards democracy; or rather democracy as it functioned around him, probably justifiably so.<sup>160</sup> He was frequently frustrated by the parliamentary democratic process he worked with and the politicians who were involved in it.<sup>161</sup> He even seems to have got so annoyed with the French parliament, after the passing of the ECSC, which made 'daily administration' very difficult, that he considered having its constitution changed 'A young professor ... worked with me on a plan for constitutional reform which we thought would remove the temptation for parliament to overthrow governments with such unconcern.'<sup>162</sup> He seems to have wanted to design or have designed a better democratic system for France, and finally a new system was created so he was not far wrong in his views. The true goal of this technocrat and business man par-excellence seems to have been to create, temporarily at least, a non political source of power at the centre of Europe,<sup>163</sup> as the following quotation suggests 'As Hobsbawm argues, it is therefore "misleading to speak of the "democratic deficit" of the European Union. The EU was explicitly constructed as nondemocratic (i.e. nonelectoral) basis, and few will seriously argue that it would have got where it is otherwise."<sup>164</sup> Possibly Monnet was also interested in downgrading politics, governments<sup>165</sup> and politicians, elements as they were of failed problematic Nation States;<sup>166</sup> certainly he felt that serious issues like going to war should be removed from their sphere. The Monnet Method raised up the technocratic ideal which at its core perceived of the world as being better off with more limited politics, with the experts, the technocrats making the major decisions in a political free zone.<sup>167</sup> There is not the faintest glimmering of democracy in the initial design of Europe, and this was not intended to be the case.<sup>168</sup><sup>169</sup> Even the much praised openness of the Commission to sectoral interests combined with MS officials, which is said to be currently the case, was frowned upon by Monnet, who saw in it a chance for MSs to use such interests to force the Commission and the project along national lines again. The tempo-

<sup>158</sup> See note 148 Page. (1997) p.146 'Second, the civil service in the guise of the Commission is given the unique constitutional responsibility to initiate legislation. It is not simply an institution for the administration of decisions taken elsewhere-the constitutional theory, if not the practice, behind most civil service systems.'

<sup>159</sup> See note 62 Spence (1997) p. 98

<sup>160</sup> Craig, P and de Burca, G. *EU Law text, cases, and materials third edition*. (2003) Oxford, Oxford University Press p.9. 'Monnet...is generally seen as a functionalist, whose preferred approach to European Integration was to proceed sector by sector, and who favoured elite supranational institutions over political bodies such as the Assembly or the Council.'

<sup>161</sup> See note 3 Monnet (1978)p.362-363; see note 160 Craig; de Burca (2003) p.5

<sup>162</sup> *ibid* p.364

<sup>163</sup> See note 100 Rometsch; Wessels (1997) p.215. 'The European Council of heads of government would become symbolic in character while the European Parliament would serve as a forum for discussion.' The Council would be 'a kind of "sound-ing board"' 'This image of the Commission reflects the convergence of several sources to provide a common approach (Berlin 1987) : a French political and administrative culture, characterised by the strong position of the bureaucratic elites, symbolised by Jean Monnet.'

<sup>164</sup> See note 128 Hobsbawm (1997)

<sup>165</sup> See note 3 Monnet (1978) p.369-370

<sup>166</sup> See note 18 Wallace (1990) p.63

<sup>167</sup> See note 160 Craig; de Burca (2003) p.5

<sup>168</sup> Drake, H. *The European Commission and the Politics of Legitimacy in the European Union* in Nugent, N (ed) *At the heart of the Union*, second edition, (2000) Basingstoke, Macmillan Press, 2000, p.230. '... Yet the EU was originally designed to give priority to efficiency rather than democracy; to bureaucracy rather than politics; and to rationality rather than representativeness.'

<sup>169</sup> See note 160 Craig; de Burca (2003) p.9. 'Monnet...is generally seen as a functionalist, whose preferred approach to European Integration was to proceed sector by sector, and who favoured elite supranational institutions over political bodies such as the Assembly or the Council.'



rary, non democratic essence of the Monnet Method helps explain what followed in the EU and reinforces the thesis approach that the present structure of the Union should be radically altered and that this could enable citizens to accept the project as their own. Democracy was not planned into the European project in its initial stages by Monnet, the 'democratic' controls that there came to be simply occurred, evolved in the truest sense.

Technocrats or rather Monnet, in this instance, considered that MS politics and political systems were responsible for much of the misery and warfare which had dominated the first half of the twentieth century. The solution was to depoliticise issues and raise up technocrats to discuss<sup>170</sup> and decide on detail and apply rationalism, something technocrats were considered to excel in and politicians not.<sup>171</sup> The following quotation outlines this:

'He saw it as a sphere that required expertise, not involving the conflicts of values that are the core of politics, or at least, no conflicts that could not be solved by the application of knowledge and expertise and the involvement in the search for the right answers of interest groups with relevant experience. Informed rational people presented with a problem will come to agree upon the solution. In other words, the objective was the "depoliticisation" of the issues. It was the insistence of Belgium and the Netherlands that resulted in the creation of the Council of Ministers . . .'<sup>172</sup>

By placing the emphasis on detail and experts who could be expected to happily form a caste apart from the nationalism dominated societies in which they lived, the message of Europeanism and technocracy would thus be spread. Technocrats in all European states would be drawn to the possibility of operating in a politician and politics free sphere and thus would expand it still further. Indeed the emphasis was always on individuals getting involved in the European project and then developing a European identity as in Haas' 'Neofunctionalist theory; 'the emergence of an ever expanding network of formal and informal relationships among policy professionals and civil servants would instil the habit of acting and thinking in a "European way" which, in turn, would have a positive spillover effect on the political psychology of those elites.'<sup>173</sup> Hallstein said something very similar; "these constant contacts at different levels help to create an intellectual and psychological climate in which cooperation comes easily and naturally. People become involved and work together to find solutions to the Community's problems in accordance with the Treaty."<sup>174</sup> This was exactly what Monnet had had in mind only he would have preferred a much smaller Commission; 'Monnet had been concerned to establish a small, non hierarchical, flexible organisation, well able to establish close contacts with national officials and technicians . . .'<sup>175</sup> Accountability in a technocratic society was akin to a slur on the technocrat's reputation, like assessing their performance.<sup>176</sup>

<sup>170</sup> See note 40 Mazey, S and Richardson (1997) p.181

<sup>171</sup> *ibid* p.190 '...consultation structures and processes which are commonly employed by national bureaucracies such as the publication of Green and White Papers, information seminars, conferences, advisory committees, working groups, and informal negotiations with interested parties, are widely used at the European level (European Commission 1992a p.2). By this means, big, politically sensitive issues can be unpacked into technical and therefore more manageable, depoliticised policy problems.'

<sup>172</sup> See note 48 Stevens; Stevens (2001) p.220

<sup>173</sup> Shore, C. *Building Europe: The Cultural Politics of European Integration*, (2000) London, Routledge p.149

<sup>174</sup> See note 30 Edwards; Spence (1997) p.6

<sup>175</sup> *ibid* p.7

<sup>176</sup> Kassim, H. *A historic accomplishment: The Prodi Commission and Administrative Reform* in Dimitrakopoulos, D, D. (ed) *The changing European Commission* p.37. (2004) Manchester, Manchester University Press. 'Taking an example cited by Shore, "practices of "Staff appraisal" or "performance review" accepted in the Danish, Dutch and British civil service, are "anathema" in most Mediterranean countries. For a Spaniard, the very suggestion of performance appraisal would be considered an insult.'"

A problem became visible which was shown to be how the Commission came to handle the depoliticising of the problems:

‘ . . . the tendency (in the Commission) of bureaucratic decision-making to occur within policy communities (especially those of a technical nature) has been able to depoliticise what could have been highly divisive issues, and thereby the less overt politics of the EC has been able to force, or perhaps cajole, integration along.’<sup>177</sup>

The concentration of decision-making in sector-restricted policy communities in a Commission that was evolving into a ‘segmented and pluralistic administration,’<sup>178</sup> held the danger that sectoral loyalties and politics would replace the national ones. Monnet was well aware of these dangers and given what happened later he was justified in his fears; he was convinced ‘ . . . of the need to prevent the development of sectoral hierarchies, which he believed would similarly threaten the supranational and collegiate nature of the High Authority.’<sup>179</sup> He was worried that MS officials would be able to influence the Commission indirectly in a national direction if an overly large bureaucratised Commission relied on them too much. His two major worries were that national splits and sectoral ones could undermine supranationality, and he was right.<sup>180</sup> Finally they could bring down the whole project. Where Monnet was wrong was in the idea that they could be avoided in the EU. Finally it can be said that national politics and political problems were replaced by bureaucratic ones; ‘As Peters has observed, “the politics of the European Community is best understood as bureaucratic politics”.’<sup>181</sup>

The positive effect of the fragmentation that occurred was the creation of a European unity and policy and political layer that had not been there before. It was pointless to deny there was a new European scope to domestic political issues, the recent wars had been all European affairs affecting the entire populations of the countries involved. Ignoring this dimension was not an option it was rather a question of how to address it. The Monnet Method fragmented but it did so in order to allow for new structures and organisations to form. The European polity would be firmly held together and strengthened, essentially by breaking down the outer defences of the individual MSs. Spillover effects saw the spread of the immunising agent from one sector to another via officials and fragmented ministers forced together with the main actors in the sectors concerned, but more on that in a minute. Unlike the united national governments, and politicians acting together in a cabinet; their officials were very vulnerable and easily tempted into the project once the unified national governmental system accepted the project. Monnet’s Method took all these factors into consideration.

The goals of the European integration project were to secure peace and prosperity in Europe, these were to be the sweetener of the immunisation; much like the polio sugar lump immunisation for children. War was to be made impossible and the temptations of ideologies like fascism and communism were to be weakened by prosperity and economic growth.<sup>182</sup> Monnet knew too well that the Nation States, here the MSs, would balk at relinquishing real sovereignty to any organisation. Equally so long as the MSs remained in their historical setting of independent, competing Nation States then neither peace nor prosperity was likely to last long. What was needed was to weaken them, in a positive sense, by removing their control over the industries essential to war; coal and steel. The loss of sovereignty would be impossible to secure unless a sweetener was offered, namely, the prospect of prosperity and control

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<sup>177</sup> See note 40 Mazey, S and Richardson (1997) p.181

<sup>178</sup> *ibid* p.181

<sup>179</sup> *ibid* p.182

<sup>180</sup> *ibid* p.182,183

<sup>181</sup> *ibid* p.185

<sup>182</sup> See note 3 Monnet (1978)p.270



over the old enemy's coal and steel and peace. Quite apart from the sweetener, the immunisation seemed safe, harmless compared to the consequences of the full blown disease war. But the goal of the project was clearly stated to be to get past the hosts' defences, much as pathogens do, and to then set to work to secure peace; 'This proposal has an essential political objective: to make a breach in the ramparts of national sovereignty which will be narrow enough to secure consent, but deep enough to open the way towards the unity that is essential to peace.'<sup>183</sup> This the Commission has also followed through in practice.<sup>184</sup> Indeed the language of the quotation just provided is indicative of immunisation; it is warlike language and imagery illustrating the project's war against war.

The inoculation was necessary, but it would also be painful; to get it up and running vagueness, innocent idealism and promises, were also important ingredients in the sweet outer surface covering the Monnet Method that would set to work within the patient the European body politic and its members:

'All he would allow himself was a reference to the pool being, "the first step of a European federation", a vague term which could mean different things to different people. Although what Monnet really had in mind was the creation of a European entity with all the attributes of a state, the anodyne phrasing was deliberately chosen with a view to making it difficult to dilute by converting in into just another intergovernmental body. It was also couched in this fashion so that it would not scare off national governments by emphasising that its purpose was to override their sovereignty.'<sup>185</sup>

Schuman agreed to Monnet's plan despite the fact that 'according to one historian, although the plan was immediately greeted with great excitement by the press, the curious thing was that literally nobody knew exactly what it was about, not even Schuman.'<sup>186</sup> The project was vague and idealistic from its onset<sup>187</sup> and it is this unending vagueness and lack of clarity which makes for the surreal feel of the Union and is, as Monnet was fully aware, part of its intoxicating appeal and also its danger and evasiveness from control.<sup>188</sup> The EU is still stated to be extremely vague; 'Moreover, in EU decision making the rules are often vague, contentious or "shiftable". The rules, like nearly everything else, may even be negotiable.'<sup>189</sup> The European project was fully intended to be "flexible" and evolving, very much along the lines that Monnet had developed for the Planning Council set up to modernise France after the war, the words he used to describe this are applicable to the ECSC and EEC as well:

'The first instructions were vague: "to determine French productivity and the arrears to be made up; to propose production levels to be attained" – it might be, to regain those of 1929 in fact, the most important feature of this description was its flexibility, enabling plans in any sector to be constantly readjusted in the light of the others. Comparing notes and continual adaptation were the Cardinal rules.'<sup>190</sup>

<sup>183</sup> See note 3 Monnet (1978) p.296

<sup>184</sup> Mallory, J. *The Role of the Commission* in Nugent, N (ed) *At the heart of the Union*, second edition, (2000) Basingstoke, Macmillan Press, 2000 p.276. 'The Commission has been shown to initiate and encourage such links, thus bypassing the national executive in a "pincer" movement.'

<sup>185</sup> See note 138 Booker; North (2005) p.48-49

<sup>186</sup> *ibid* p.51

<sup>187</sup> *ibid* p.48, 51

<sup>188</sup> See note 18 Wallace (1990) p.63

<sup>189</sup> See note 1 Peterson; Bomberg (1999) p.254

<sup>190</sup> See note 3 Monnet (1978) p.239-240

There was to be an “overall view” as a starting point and the rest would be discussed and negotiated.<sup>191</sup> For the British the lack of detail about the project; its vagueness, was a problem from the start; the practicalities of the project were simply unclear, only the method of carrying out the negotiations had any procedure.<sup>192</sup> Vagueness as a method of doing business in the EU has remained constant; ‘The people weren’t ready to agree to integration, so you had to get on without telling them too much about what was happening.’<sup>193</sup> An extremely effective element of the strategy was to fragment the really controversial issues into a mass of technocratic details and to cover them up; “‘European bureaucrats’ have consciously tried to ‘bury the controversial issues under a mountain of 300 technical directives . . . ’”<sup>194</sup> It was extremely hard for politicians to really oppose heady mixtures of idealism and pragmatism without seeming reactionary and maybe even bellicose.

An often overlooked element of the Monnet Method was the mixing of domestic and foreign policy. This was implicit in the project as whole since the foreign policy area of warfare required domestic economic support to be carried out effectively. What maybe seemed like a treaty of sorts, a foreign policy matter, was really opening the vulnerable domestic political spheres of MSs to a new force, alien to it.<sup>195</sup><sup>196</sup> Foreign policy methods had been extended to domestic policy actors and sectors. Therefore it is not surprising to find that, ‘Domestic constitutional arrangements generally treat EU policy making as a matter not of domestic but of foreign policy . . . ’<sup>197</sup> For Nation States conceiving of the European project as a foreign policy tool was probably conducive to their being willing to sign up to it; it is noticeable that the classic foreign policy method of a treaty was chosen to found the ECSC and EEC and not a constitution. Misleading, considering that it had distinctly constitutional overtones and would affect the internal political functioning of MSs, but necessary as MSs were expert at foreign policy and had large numbers of experienced diplomats to rely on, it would have appeared controversial, yes, but also safe and familiar. But the reality would be that domestic ministers, and their sectors, were, unusually, now acting like diplomats and surrounded by diplomats in COREPER. National politicians are trained to defend their portfolios against other national ministers, not carrying out what is effectively diplomacy to attain their goals both in the EU and domestically and are at a disadvantage. But they are also probably tempted by the prospects of adding the prestigious area of foreign policy to their own, even if only for a day. The Commission, a foreign body not located in the national body politic, could now, once past the external defences, apply domestic political tools like mobilizing support in groups and institutions in MSs for specific policies<sup>198</sup> and so outmanoeuvre politicians.<sup>199</sup> In general, domestic issues were, to an extent, being decided on by diplomats, given that COREPER officials decide a large proportion of Council policy whilst not always seeming to be fully on the side of the minister as will be seen. Whether foreign policy Realpolitik is the appropriate method of seriously affecting domestic policy seems doubtful. Whatever else accountability and transparency, those ‘musts’ of parliamentary government are not the first words that spring to mind when discussing diplomacy. It was another strange mixing of previously quite separate areas of governmental policy and will be discussed later.

<sup>191</sup> See note 3 Monnet (1978) p.236

<sup>192</sup> *ibid* p.307

<sup>193</sup> Pascal Lamy quoted see note 173 Shore, (2000) p.18

<sup>194</sup> See note 173 Shore, (2000) p.19

<sup>195</sup> Dinan, D. *The Commission and the IGCs* in Nugent, N (ed) *At the heart of the Union*, second edition, (2000) Basingstoke, Macmillan Press, 2000 p.268, 269

<sup>196</sup> See note 184 Matlary (2000).

<sup>197</sup> See note 104 Dinan, (2000) p.287

<sup>198</sup> See note 148 Page. (1997) p.146

<sup>199</sup> See note 40 Mazey, S and Richardson (1997) p.191



Monnet was usually too wily a political expert to try for the grand Madisonian moment with a declaration of a new European federal government. Equally he knew that a Council of Europe and related organisations would not achieve the unifying of the MSs as he wanted. He would need to get past the instinctive defences of the Nation States, honed by centuries of experience and more than able to undermine any League of Nation's attempt at restricting their actions. His Method would be promoted by a minimal organisation, something that should remain outside the structures of European government and "ought to remain a nucleus and confine itself to organizing and stimulating the work of others. For the rest, it could rely on the national civil services.' The Monnet Method deliberately masked what was happening to prevent the project being aborted at an early stage.<sup>200</sup> It had to avoid detection and initial confrontation by the traditional defences of the body politic:

'As the French statesman and arch federalist Jean Monnet saw it, a European state would emerge through the steady, cumulative effects of small incremental steps. This strategy would also avoid any head on confrontation with national governments, which would willingly surrender control to the Community, at first because Nation States would not feel threatened by their lost authority in apparently innocuous spheres of activity, and because of the economic advantages to be gained by joining a larger market. But later, as more areas of control were ceded, individual Nation States would become incapable of independent action until 'one day the national governments would awaken to find themselves enmeshed in a "spreading web of international activities and agencies" from which they would find it almost impossible to extricate themselves.'<sup>201</sup>

The aim for the organisation was 'to maximize the chances of survival and influence in a world of entrenched bureaucratic interest.'<sup>202</sup> The organization would be both 'Human and informal.'<sup>203</sup> What he wanted was a process:

"This was political institution building as a strategy: to promote economic integration, in the expectation that social integration would accompany it, that the functions, interests and loyalties of elites - at least - would thus be progressively transferred from each Nation State to the broader institutionalised community, which would in turn "lay the foundations" for an eventual political union. It was a process which implied a beginning and an end: from and beyond the Nation State to the eventual achievement of European Union." One criticism of this approach, however, is that it tended to view political integration as a mechanical process; a necessary by product of economic, legal and technical measures.'<sup>204</sup>

In fact, despite the last view of the author just quoted this is just what happened although not quite as planned and perceived by Monnet; governmental bodies did emerge as a reaction to his Method, and maybe 'by product' is a fair way of describing them. Monnet like many of his generation was aware of the failed hope that had existed with the League of Nations, namely, that it would ensure that the war to end all wars was indeed the last.

<sup>200</sup> See note 148 Page. (1997). 'He (Monnet) envisaged European administration as a small body of officials from different backgrounds who would work together to produce solutions to common problems. The logic behind this model in the Commissariat du Plan was to maximise the chances of survival and influence in a world of entrenched bureaucratic interests. Monnet sought to keep the Commissariat small so that no-one of its big brother ministries...considered it a threat worth clobbering'... Monnet's own vision of a European administration arose from an intention to create an institution very similar to that of the Planning Commission in its ability to innovate and to adapt to the existing bureaucratic institutional environment.'

<sup>201</sup> George 1985:20 quoted see note 173 Shore, (2000) p.42

<sup>202</sup> See note 148 Page. (1997) p.5

<sup>203</sup> Monnet 1978:241 referred to see note 148 Page. (1997) p.5

<sup>204</sup> See note 173 Shore, (2000) p.43-44

To achieve real peace, new legislation that would establish the practicalities of the European layer had to be accepted in future as domestic in origin and not external.<sup>205</sup> That way, after the external line of defences, the national governments or their representatives, had been brought to sign the vague treaty, the more detailed legislation would go into force without needing further treaties or parliamentary supervision and scrutiny. The foreign body, the Commission, would be able to use the resources of the MSs and be accepted governmentally as if it were a domestic political actor whilst remaining beyond the control of the domestic political scene. The method of having EEC legislation automatically incorporated into national legislation so that the difference between the two was simply not apparent was effective. Neither the demos, nor its representatives would usually be able to affect the flow of legislation even if they could recognise which piece originated from where. Both the ECSC and the EEC treaties achieved just this point:

‘ . . . and established the European Coal and Steel Community which differed from the previous international organisations in one vital respect: the parties to the treaty agreed to be bound by the decisions reached within the ECSC framework even if they did not explicitly consent to them. They also agreed that the ECSC institutions . . . should be able to exercise their powers within the MSs without requiring any further processes such as national legislation.’<sup>206207</sup>

The Monnet Method was also that of ‘engrenage’ briefly outlined before but more detail is required and the following two quotations are useful:

‘ . . . engrenage loosely means “getting caught up in the gears” It connotes the “Monnet Method” of integration: individuals, interest groups, institutions and national governments, once involved in a specific course of action, find themselves having to take additional, broader actions that unwittingly deepen European Integration.’<sup>208</sup>

‘Its “functions” are to integrate and socialise national subjects into the structures, norms and values of the EU: to draw individuals into the EU’s institutional web of meanings in order to change the way they see themselves. Engrenage is therefore best understood as a “political technology” or administrative instrument designed to forge European consciousness and European identity among those policy professionals who operate above the level of the Nation State. In short, it functions as a mechanism to “Europeanise” national administrative and political elites by socially and symbolically transforming them into a cohesive “supranational” elite that sees itself as distinctly and transcendently “European.”’<sup>209</sup>

The French were even more explicit about how The Method should go into action; ‘The French, indeed, tended to argue that the Community itself would benefit if the Commission was made up of seconded national officials who then returned “Europeanised” to their capitals.’<sup>210</sup> The officials and politicians finally, were being drawn into the European system by a beneficial ideology.<sup>211</sup> Engrenage was and is a brilliant method of effectively separating the officials from their direct political masters, by bringing MS officials over to the Community

<sup>205</sup> See note 148 Page. (1997) p.129 ‘Such legislation, “decree laws” or “delegated legislation” in member states, is routinely passed without legislators being expressly asked to consent to the legislation...such post hoc powers of scrutiny by legislative committee are relatively weak powers of supervision over bureaucracy...’

<sup>206</sup> See note 48 Stevens; Stevens (2001) p.1-2

<sup>207</sup> See note 148 Page. (1997) p.129 ‘Such legislation, “decree laws” or “delegated legislation” in member states, is routinely passed without legislators being expressly asked to consent to the legislation...such post hoc powers of scrutiny by legislative committee are relatively weak powers of supervision over bureaucracy...’

<sup>208</sup> See note 104 Dinan, (2000) p.166

<sup>209</sup> See note 173 Shore (2000) p.148

<sup>210</sup> See note 30 Edwards; Spence (1997) p.6

<sup>211</sup> See note 62 Spence (1997) p.71



side by increasing their interactions with the Union either via the many advisory and managerial committees or via working together with the Commission on policy development. The problem is though that the seemingly intended temporary fragmentation of government with MS governmental officials transferring their loyalty from the nation to the Community in fact resulted in a less positive permanent situation, where ‘obligations, identities, become diffused among different levels of community, rather than transformed, by continuing interaction.’<sup>212</sup> That national civil servants behave as Union ones in implementing it, is an extension of the engrenage method. The unfortunate result though is a distortion of lines of accountability difficulties in identifying which actors were involved in legislative generation as will be shown.

A vaccine or pathogen must spread, via the blood, around the host and the High Authority – Commission were both intended to expand organizationally and, in terms of competences and policy fields, to spread. This is the natural tendency of organizations and, of course, pathogens and vaccines and is the essence of the spillover theory, mentioned earlier and given in detail below. Monnet was the architect of the EU and Neofunctionalism captures the ideals of the Monnet Method quite nicely; ‘political actors in distinct national settings are persuaded to shift their loyalties, expectations and political activities towards a new centre, whose institutions possess or demand jurisdiction over pre-existing Nation States,’<sup>213</sup> economic integration in one area and the engrenage of MS technocrats forces politicians to behave in certain ways. Essentially the European technocrats set the agenda and draw the national technocrats and interest groups into a form of alliance<sup>214</sup> which not only effects the immediate goals but then affects other areas of social, economic and political life. Alliances between groups and supranational officials first took place in the ECSC and this has continued since then.<sup>215</sup> The European technocrats are then, de facto, actors involved and affecting another area-sector. Politicians cannot direct the technocrats and are not expected to do so, rather they face an endless succession of decisions which have effectively been decided on the ground in advance for them; ‘The emergence of “regulatory communities” and “policy networks” at the EU level, within which affected interests play a key role, means that national governments increasingly find themselves reacting to an EU policy agenda which has effectively been set elsewhere.’<sup>216</sup> A classic example from a Weberian perspective of the tail wagging the dog, not only that but this situation is raised up as a virtue;<sup>217</sup> thus doubly ‘pathological’ from a Weberian ideal perspective.

A spillover critical mass was expected to develop to force the formal creation of the federal layer but it did not happen. Monnet’s hope of, in effect, presenting the MSs with a de facto federal system which they would have to then formally translate into a federal government unfortunately underestimated, firstly, the durability of the MSs in the face of the supranational project; secondly, the need to bind bureaucrats and executives, the ultimate accumulators of powers by gradual extensions of competences, into a formal, detailed allocation of competences to prevent this natural, hard to reverse accumulation taking place. He also underestimated the extent to which bureaucrats and the executive would try to resist effective parliamentary intervention, whilst playing the democratic card when convenient, and be content to continue with a working ad hoc system that provided them with what they wanted. And he

<sup>212</sup> See note 18 Wallace (1990) p.55 and 56

<sup>213</sup> See note 23 Wallace; Wallace (2000) p.16

<sup>214</sup> See note 184 Matlary, (2000)

<sup>215</sup> See note 40 Mazey, S and Richardson (1997). ‘Some fairly stable “policy networks” involving ECSC officials and corporatist interests were apparent as early as the mid -1950s (Mazey 1992).’

<sup>216</sup> *ibid* p.191

<sup>217</sup> See note 148 Page. (1997) p.146 ‘Second, the civil service in the guise of the Commission is given the unique constitutional responsibility to initiate legislation. It is not simply an institution for the administration of decisions taken elsewhere – the constitutional theory, if not the practice, behind most civil service systems.’

also ignored the 'organic' reflex of DP to try and contain the project immediately. Thus the Monnet Method was efficient from a bureaucratic perspective in achieving goals and targets but it came at a cost to less measurable things like democracy, accountability and representation, and finally efficiency itself.<sup>218</sup>

One last point about the Monnet Method was that it used the notion of divide and rule as part of its struggle. The Commission often calls for efficiency measures in conjunction with enlargements which it is usually in favour of. Logically the increase in the number of countries involved in the Council will result in greater opportunities for the Commission to make deals with various Countries. But at the same time it is aware of the problems associated with this when applied to the Commissioners in its own College. Thus the perfect solution is to call for efficiency measures in the Commission itself. The MSs were and are equally aware of the need to have a solution to the numbers game in order that 'shared interests' could be followed '... which led to the Single European Act were completed in time for the Luxembourg European Council of December 1985: its acceptance of extended majority voting and strengthened powers of initiative for the Commission reflecting rather less the enthusiastic pressures for European Union from within the European parliament than acceptance of the necessity of more efficient procedures for the pursuit of shared interests through common decision in a Community of Twelve.'<sup>219</sup> But the MSs were not willing to allow this to be the gain of the European Commission. Thus the MSs have deliberately kept their number of Commissioners unchanged, in part no doubt to maintain their own influence and status in the Commission but also it appears to be the case that their refusal to reform Commissioner numbers is also due to their desire to 'assert' power and to thus ensure that it is difficult for the Commission to 'carry out its responsibilities effectively.'<sup>220</sup>

The Monnet Method, in summary, contained four major strands; it mixed bureaucracy and politics effortlessly endowing both with each other qualities; it fragmented everything; above all it was technocratic, bureaucratic in origin, as was Monnet himself, (and soon, inevitably, growing organisational size would lead to specialization and sectorization and the bureaucratic disorders or 'disease'); and lastly, it placed a lot of weight on small, flexible issue oriented groups of officials and outmanoeuvred politicians. As soon as the organization of the High Authority – Commission failed to meet with Monnet's strict requirements to keep it out of the firing line, as it were, it was itself liable to become subject to the Monnet Method and become itself fragmented along the line of bureaucratic sectors, subject to bureaucratic disorders, undermined by smaller flexible groups of politicians and officials with the emphasis in small informal settings of power going to the expert, the official, although the executive politicians and officials as a whole gain. If the organisation's mission derived identity and justification i.e. European ideology and a dynamic political leader were to weaken, then it would be without internal defences. The 'carrier' would become the subject of the 'pathogen'.

#### 1.2.4 THE IMMUNISATION OF WESTERN EUROPE: AN OVERVIEW

Now that we have discussed the Monnet Method and the Democratic Parliamentary approach we will now move on to look at the actual process of immunization first of all from a broader perspective. The nascent European polity to begin the inoculation on, was available in the form of the Council of Europe and the other economic organisations created after the Second World War. It is a matter of discussion whether there is a European body politic now or if there will ever be one. At the earliest stages there was the intention to create a European body

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<sup>218</sup> See note 1 Peterson and Bomberg (1999), p. 275

<sup>219</sup> See note 18 Wallace (1990) p.86

<sup>220</sup> See note 110 Kassim; Menon, (2004) p.97



politic.<sup>221</sup> Some call the EU a 'Regulatory State'<sup>222</sup> whilst others deny that it has any state like characteristics. To talk about the beginnings of a European polity, seems a relatively safe notion, backed up by the most respected of authors.<sup>223</sup> In post war Europe there was a common condition of exhaustion and disillusioning recent experiences, the MSs had shared a similar recent history of warfare, bloodshed, economic ruin, growing communist influence. Most were too ruined to easily return to their previous status as independent Nation States; quite apart from anything else national governments had all shown their weaknesses and failures to their publics. There were also a few organisations able to act as nodes for a growing European consciousness.<sup>224</sup> Whilst the Council of Europe was not a full blown body politic as such; it was the beginnings of one. Certainly the relevant elites with the required power to initiate its creation considered they had enough in common to seriously discuss various concepts of integration between France and Germany.<sup>225</sup> A degree of fusing of the Nation States and their body politics had taken place during the war and some was required to distribute the American financial aid. The Council acted to socialize 'an entire generation of European politicians . . .',<sup>226</sup> amongst whom was Adenauer who had been present in the Hague in 1948.<sup>227</sup> All the future MSs of the EU were represented at the organisations with the political extensions of their national body politics sitting on the committees and councils. There was enough of an interface between the MS 'hosts,' their bodies' politic, and the proto European polity based on them (from now on host or host(s) represent both) for the Monnet Method to be set to work. To sum up the situation the MSs were all exhausted, bled dry, and desperate for renewal and extremely sensitive to even the least threat of another war. This was the perfect moment for the MSs to be tempted into accepting a new path forwards, or at least to grab at the vague promises of peace and prosperity.

The fear which overwhelmed the French government in 1950-51 at the prospect of the Americans deciding on the method of control of the Ruhr coal and steel industries, finally made them more than willing to listen to Monnet's suggestion; thus they could offer a constructive solution on the Ruhr issue to the Americans which they would have to accept.<sup>228</sup> Schuman backed the plan without really discussing it with the rest of his cabinet colleagues and the Prime Minister who was not in favour of it, very much reminiscent of the method the Councils of ministers follow currently, with secrecy and ministerial deals deliberately avoiding the control of national cabinets and Prime Ministers:

'It must be added that this was in no small part thanks to Schuman, whose loyal backing helped Monnet circumvent the French administration and cabinet, which, in being called upon to ratify the Treaty of Paris, faced what amounted to a fait accompli: Europe: oui ou non! This removal of the Coal and Steel pool from quondam politics had, given the vividness of French war memories a critical bearing on the outcome.'<sup>229</sup>

The ECSC was intended to be the first step on the road to a federal Europe. The next step was the creation of the European Defence Community (EDC) and a European Political Commu-

<sup>221</sup> See note 173 Shore, (2000) p.20

<sup>222</sup> See note 104 Dinan, (2000) p.288

<sup>223</sup> See note 23 Wallace; Wallace (2000) p.541

<sup>224</sup> See note 18 Wallace (1990) p.72; 'The convergent influences that provided the impetus which carried formal European integration beyond the OEEC and the Council of Europe to the ECS, and past the set back of the proposed European Defence Community to Euroatom and the EEC...'

<sup>225</sup> See note 138 Booker; North (2005) p.51

<sup>226</sup> See note 104 Dinan, (2000) p.102

<sup>227</sup> See note 138 Booker; North (2005) p.51

<sup>228</sup> *ibid* p.51 p. 47-48

<sup>229</sup> See note 104 Dinan, (2000) p.180

nity to supervise it. The EDC was launched on Monnet's initiative in 1950<sup>230</sup> and was signed by the ECSC members in 1952. This was, however, unlike the ECSC, state formation on a grand scale and at an accelerated speed. What is interesting to note is that although the treaty was signed by all the governments of the MSs; it was severely treated by the parliaments during the ratification process. The MS leaders saw the EDC and EPC as useful for their national interests from one perspective but the parliaments held a different perspective on those same interests and finally the French parliament voted it out in a burst of DP; '... the EDC was destroyed by a political tidal wave.'<sup>231</sup>The initial period of state formation was halted. The drive to solve imminent German rearmament by the EPC a supranational solution was replaced by the intergovernmental Western European Union (WEU) in 1954 into which West Germany was integrated and Britain too.<sup>232</sup>

The European institutions were the result of the European polity attempting to 'catch up' with the effects of the Monnet Method and to encase the Method in a mass of DP antibodies. The instinctive response of the MSs and DP to the presence of the Monnet Method in its institutional form of the High Authority and then the Commission seems all too organic. Each of the major provocations of the Commission or Monnet resulted in new governmental forms evolving to contain the next step of integration. Thus the intergovernmentalists and Supranationalists are both right; the latter provoked and the former attempted to contain the effect. A body is taught by the progressive effect of an inoculation mimicking often the real disease it prevents, only in a much milder form; all the organs learning to act together to oppose the threat, with resultant swellings in parts of the body where the immunising agent is surrounded by the antibodies. Using this analogy, the various institutions, be they the EP or the Council of Ministers or the European Council all represent the swellings formed by the forces of DP to contain the current form of the Method. And it has to be said the hosts have proven to be remarkably healthy given the speed of the immune system almost too healthy at times. With the ECSC and the intention to make it even more expert oriented than it turned out to be, Monnet provoked a reaction by the MSs concerned who insisted on the creation of the Council and Assembly with their ministers involved however weakly, the resulting ECSC was thus tamer and the national governments more or less continued to control their industries. The EEC and its creation the Commission, were surrounded by an even tougher political safeguard in the EEC Council and even quickly provoked further reactions from the MSs. The first was an abortive attempt by the French government with Italian support to create an intergovernmental sort of political organisation '... designed to bypass, throttle or even take over supranational economic activities,' it was evidently 'incompatible' with federal goals and hopes.<sup>233</sup> It was a first shot at a European Council which would finally be imposed on the EEC, but at this point the supranational project was too strong and DP was not in support of the intergovernmental organisation; 'The whole subject was referred by the six to a special committee... These objections amounted in sum to the contention that the plans left out all the principle features of the EEC's own constitution, since they contained no provision for a parliamentary element or for an independent executive or for eventual decision by majority vote.'<sup>234</sup>The 1965 Commission President Hallstein's provocation of de Gaulle<sup>235</sup> resulted in the Empty Chair crisis followed by the Hague summit and the creation of the European Council. The Delors drive for integration resulted in a weakened Commission and the desire to involve national parliaments more.

<sup>230</sup> See note 104 Dinan, (2000) p.348

<sup>231</sup> *ibid* p.348

<sup>232</sup> *ibid* p.196

<sup>233</sup> Calvocoressi, P. *World Politics since 1945* (1987) Harlow, Longman p.176.

<sup>234</sup> *ibid* p.176.

<sup>235</sup> *ibid* p.179



A general rule seems to exist that officials and politicians are successfully caught in the gears, just as was intended and that as a result ever more MS governmental resources and elements are drawn into the gears to attempt to remedy or re-balance the equation. This progressive effect is seen in the fact that, initially, the ECSC Council was considered enough to contain the High Authority and the national officials who were easily drawn into the gears. Whilst, following the EDC provocation, the EEC was from the start less expert dominated; the Council of Ministers had more influence<sup>236</sup> and COREPER was soon created. But the tendency of officials in COREPER and sectoral ministers to ignore national MS needs and thus DP showed that both were inappropriate watchdogs of DP interests.<sup>237</sup> Constitutional courts and MS legal systems were also, as a whole, unable to prevent themselves being caught in the gears and becoming, in effect, co-opted into the European legal system. The next layer of Nation State defence was drawn in, with the European Council the national leaders, extending their control over the project as a whole and so over their ministers.<sup>238</sup> But national leaders equally got caught up in the gears,<sup>239,240</sup> tempted in particular where planning grand projects were concerned, and created controversy with national electorates over Political Union and the single currency.<sup>241</sup> Not surprisingly electorates treated the national governments and the European layer as increasingly synonymous. The next layer of DP to be involved was to be the national parliaments or so the European Constitution intended. The apparent failures of the Commission and Monnet when the project was taken over by MSs and DP and attempts made to contain it, in fact represent not so much failures but successes although probably unintended by Monnet, but more on this later.

With each new stage in governmental building to contain the High Authority - Commission there is a large influx of new bureaucratic actors to take up the newly created positions.<sup>242</sup> These actors: ministers and officials developed organisational loyalty and also loyalty to the project they depended on for status and promotion:

‘No significant degree of integration could take place without the provision of personnel to administer the integrated sectors. And once these officials are appointed they will tend to acquire a loyalty to the organisation rather than to the states of their origin, at least with regard to their won area of work . . .’<sup>243</sup>

Thus the new governmental development soon had a large number of officials generating equally large amounts of work and developing contacts to guarantee its continuation. They needed to justify their existence so there is logically more and more Europe. The creation of the Council was originally not intended to include COREPER, but the Council members ‘de-

<sup>236</sup> See note 104 Dinan, (2000) p.183

<sup>237</sup> See note 173 Shore (2000) p.219 ‘Much more than simply an abstract theory of ‘cognitive change’ engrenage clearly does work as a key mechanism in the creation of a new type of ‘European’ subjectivity. This process also appears to be happening in the Council of Ministers...particularly among the seconded national civil servants working in its various permanent and specialised working groups.’

<sup>238</sup> See note 132 De Schoutheete, (2002) p.23,24

<sup>239</sup> See note 1 Peterson; Bomberg (1999), p.255

<sup>240</sup> Rasmussen, P. Danish Prime Minister in the Financial Times 29.05.1998, ‘There will always be elderly gentlemen who dream of great projects, but do not necessarily have the support of the people.’

<sup>241</sup> See note 1 Peterson; Bomberg (1999) p.274; ‘Elite actors who dominate EU decision making have become socialised to a permanent system of bargaining to which they are “locked in”.’

<sup>242</sup> See note 18 Wallace (1990) p.84 and p. 79; ‘The establishment of the European Communities as a focus for authoritative and effective decision making over a limited range of policy areas brought together an increasing number of national ministers, officials and interest group representatives. Once assembled, these people exchanged information and opinions on subjects beyond their immediate agenda, and acquired habits of constructive bargaining as they were socialised into continuing groups. The linking together within a formal framework of rules and rulemaking of the geographically and economically central countries of western Europe, in the pursuit of a range of economic and political objectives, changed the context within which their neighbours approached international cooperation.’

<sup>243</sup> Gordon Smith 1983:248 quoted see note 173 Shore, (2000) p.148

manded their own permanent staffs in Brussels.<sup>244</sup> The result was COREPER which was initially only there to get the decisions ready for the ministers.<sup>245</sup> Over time this preparation was extended to include reaching the decisions themselves in the vast majority of cases, 'COREPER was also criticised for undermining the role of ministers in the interests of further technocratization.'<sup>246</sup>

Now that we have considered the broader immunization process we will examine the organisations concerned in greater detail.

#### 1.2.4.1 COMMISSION

The Commission and its two main elements the political 'leadership,' the 'College of Commissioners,' and the administration, the 'services', are now considered. The DP response to the ECSC and how it performed its supranational tasks, combined with the EDC experience, led to different structures being planned for the EEC than there had been in the ECSC. The perceived political accountability deficiency of the ECSC resulted in the strengthened position of the Council<sup>247</sup> in the new EEC and a supranational attempt to appease DP concerns with the creation of the College of Commissioners. A comparison of the ECSC and the EEC shows that more political EEC Commissioners were to have a greater say in the new supranational organisation and the increasingly political and ministerial background of the Commissioners over time<sup>248</sup> can be seen as DP attempts at reducing the 'danger of a technocratic approach' that ignored the public.<sup>249</sup> At first the College appeared to represent a strengthening and stabilising of the supranational position and organisation. It reinforced the political leadership of the Commission and returned it to a level similar to that which Monnet had himself had enjoyed as President of High Authority at its beginning before opposition and problems began to develop. The developing notion that the College would function to ensure some political accountability of the Commission services is also indicative of its more observable potential as a complete future government as compared to the High Authority. Elected legislatures hold the executive and bureaucracy accountable, and considering the College as doing this shows it being treated as if it were a legislature which is problematic from a democratic perspective.<sup>250</sup> The creation of the College was also an organisational strategy to oppose the more political oriented Council in the less technocratic EEC. Organisationally the College was needed to re-balance the size and bureaucratic tendencies of the Commission services which could be expected to expand to the size of those of the High Authority. Monnet's desire for the ECSC had been for a small organisation but it had increased remorselessly in size, and developed bureaucratic tendencies, in part, to oppose the large MS ministries it dealt with. This increase in size had not been considered in relation to the capability of the ECSC leadership to direct it; a more rational balance was required for the EEC.

However, the College of Commissioners revealed after the de Gaulle crisis that it could also to be activated to allow MS pressure and influence and so DP; de Gaulle was of the opinion

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<sup>244</sup> See note 138 Booker; North (2005) p.87

<sup>245</sup> *ibid* p.87

<sup>246</sup> See note 104 Dinan, (2000) p.69

<sup>247</sup> *ibid* p.183

<sup>248</sup> See note 146 Donelley; Ritchie (1997) p.35

<sup>249</sup> Macmullen, A. *European Commissioners: National routes to a European Elites* in Nugent, N (ed) *At the heart of the Union*, second edition, (2000) Basingstoke, Macmillan Press, 2000 p.49

<sup>250</sup> The Commissioners are simply not elected by anybody at any governmental level. Their position as ex politicians often means they are members of national political elites but with no representational, democratic value. After all many ex politicians serve on boards of companies owing to their political connections without any attempt at suggesting that these ex politicians are democratic representatives.



that the supranational, non-elected Commission had no right to accrue the symbols of sovereignty and to behave as it did. There seem to be cyclical attempts by MSs to use their Commissioners to apply influence in the College and in the Commission. This seems to be a DP attempt at applying pressure to the Commission at tricky, tense times, usually after a period of Commission expansion, as under Hallstein and Delors. Increasingly Commissioners have been chosen who understood public and MS top governmental sensibilities after being ministers, quite apart from enjoying close contacts with colleagues at home. After the Hallstein Commission the Commissioners became increasingly MS oriented.<sup>251</sup><sup>252</sup> The extent of MS penetration of these ranks was the subject of criticism in the Spierenburg Report 'Proposals for reform of the Commission of the European Communities and its services' of 1979, and the Commissioners' cabinets, on whom the Commissioners to a large extent depend for advice and ensuring their decisions are enforced, shared in a lack neutrality; 'Ross quotes an official from DGIII who argued that "cabinets are always pursuing their own national interests."' <sup>253</sup> The result recently has been that, using the example of agriculture, the Commission can be considered to be another institution full of 'veto points' primarily for the MSs and can be considered in this respect similar to the Council; 'Although the Commission is a collective body, it divides along national lines.'<sup>254</sup> And ' . . . so, even within the Commission there are several veto points.'<sup>255</sup> The amount of MS penetration of the Commission before and under Prodi is discussed further in the Conclusion.

The increasingly high number of top MS politicians being appointed as Commissioners<sup>256</sup> possibly reflected and reflects, in addition to the growing importance of the EEC, the MS's desire to appoint reliable politicians who will not go native. However the Monnet Method was at work as in the ECSC or in a higher gear; officials and politicians were appointed to the Commission and involved in its structures and quickly became co-opted into the technocratic European project. Too quickly for the liking of some of the MSs; the Commissioners institutional identity proved stronger than some had expected.<sup>257</sup> Once there, many became enamoured with the European ideal and the possibilities that it contained, and involved their domestic networks to further promote the ideal and to bring in their expert knowledge to the Commission's dialogues and finally to help ensure that policies were enforced. The project was full of idealism which was strongest at its beginning and the first Commissioners were very much influenced by this. Under Hallstein Commissioners were not just to remain loyal to supranationality in the Commission, they were expected to ' . . . foster a European identity within the Member States.'<sup>258</sup> Following from this logic, the higher the political profile of the Commissioners the better.<sup>259</sup> The Luxembourg Compromise ended that; 'The Luxembourg Compromise of 1966 appeared to set the limits both to the integration process and to the independence and initiative of the Commission. It introduced a period of disenchantment with supranationality . . . ,'<sup>260</sup> and made the Commission and College more MS influenced than be-

<sup>251</sup> See note 36 Daugberg, (1999) p.422. 'Although the Commission is a collective body, it divides along national lines. Until the mid-1960s, the Commission consisted of Commissioners who had been there since the creation of the EC. They had idealistic attitudes towards European Integration. Thereafter, a new generation of Commissioners took over. These "Commissioners and their staffs (were) increasingly conscious of their separate national identities and loyalties". Compared to the first generation, the Commissioners of the early 1990s were also more nationalistic... So, even within the Commission, there are several veto points.'

<sup>252</sup> See note 148 Page, (1997) p.36 referring to the Spierenburg Report 1979; 'Spierenburg emphasised the importance of the national dimension as a major cause of fragmentation above all in the College of Commissioners.'

<sup>253</sup> *ibid* p.126

<sup>254</sup> See note 36 Daugberg, (1999)p.422

<sup>255</sup> *ibid* p.422 referring to Agra Europe issue.

<sup>256</sup> See note 146 Donelley; Ritchie (1997) p.35

<sup>257</sup> See note 249 Macmullen (2000) p.50

<sup>258</sup> See note 146 Donelley; Ritchie (1997) p.44

<sup>259</sup> *ibid* p.44

<sup>260</sup> See note 30 Edwards; Spence (1997) p.2

fore, which the MSs had probably wanted and expected from the start.<sup>261</sup> Probably in the interests of DP, larger states aimed to ensure that the opposition in the national government were equally represented in the Commissioners designated by their MS. Where possible as full a representation of the national parliament would be present in the College.<sup>262</sup>

Whilst a political background is not a requirement for a Commissioner many have had one and certainly the more effective and influential Commissioners have had political careers, often, seemingly, the more powerful a Commissioner had been politically previously in his MS career the greater the impact of the Commissioner on the Commission and the European project. Without the dynamic leaders like Hallstein, Delors, Jenkins, it is hard to imagine the project getting as far and as fast as it did, Monnet stealth or not. Interestingly, national politicians acting in a democratic free zone with institutional and European loyalty, provoked their democratically elected colleagues to attempt to contain them and their organization, the Commission. Only the presence of a strong, charismatic MS politician with a network to match enables the College and thus Commission to be anything more than a collection of individuals. In the normal run of things the Commissioners are a part of the problem of political accountability and control. Just as the European Parliament made the European Project appear democratic whilst avoiding major changes and reorganisations that would have left a truly democratic European government in place, no doubt considerably weaker in terms of competences, but infinitely stronger in terms of democratic credentials;<sup>263</sup> so the College does something similar to the Commission.

Regarding the rest of the Commission, the 'services', the endless debate between the inter-governmentalists and supranationalists seems to be a debate about the two sides of a coin, a point other academics have also noted.<sup>264</sup> The top ranks of the 'services' have at times promoted national interests and at times purely Community ones, or probably more often than not mixed versions, compromises. MSs are stated to have a desire to 'secure a power base' in the 'internal organisation of the Commission' or to resist change which would damage their interests, which can create problems for the Commission in allocating its own resources internally.<sup>265</sup> Some DGs were/are flagged down (dominated in staff nationality terms) since they were of national importance.<sup>266</sup> It is known that if a policy is being begun in a DG that a MS dislikes or wants watered down, the various non bureaucratic methods of placing officials in the position in which the MS requires them, are known as, 'parachutage' or 'piston.' Or seconded national officials come into play who are placed in the DG concerned, for a period of around three years, and charged with dealing with the policy concerned. Monnet was well aware of the dangers to the 'independent European civil service' he wanted, by MSs being able to overly influence personnel choices;<sup>267</sup> despite the possible benefits of more MS - Commission collaboration. The placing of certain officials anywhere in the organisation operates outside the formal structure of promotion that the Commission controls.

In fact, to sum up, the Commission recently, and no doubt at times throughout its history, has seemed remarkably similar to that, according to some, most intergovernmental of organiza-

<sup>261</sup> See note 36 Daugberg, (1999) p.422

<sup>262</sup> See note 112 Nugent, (2000) p.296

<sup>263</sup> See note 173 Shore (2000) p.226 'As this study indicates, and as most EU analysts accept, decision making in the EU is extremely undemocratic: the result of covert deals, bargaining and compromises struck between ministers and their permanent representatives in the Council of Ministers, conducted behind closed doors. The European Parliament is not a legislature, it does not elect a government, and it lacks credibility as the democratic conscience of the Union.'

<sup>264</sup> See note 1 Peterson; Bomberg (1999), p.261

<sup>265</sup> Spence, D. *Structure, Functions and procedures in the Commission* in Edwards G (ed) *The European Commission*, (1997) Cartermill, London p.108

<sup>266</sup> See note 148 Page. (1997) p.51, 52

<sup>267</sup> See note 62 Spence (1997) p.82.



tions, the Council of Ministers. National issues and positions gradually became more important in the College, for example, than before and this will be considered later. But more importantly the sectoral breakdown of the Commission combined with nationality led, under Prodi, to that most Council of methods, avoiding a vote if possible. For an organization which should be collegial, indeed has to be, this was interesting enough. It should be said that the College has often had problems with appearing or behaving as if it were collegial or cohesive at all; 'For one thing, the College under Prodi was not a very collective or collegial Commission.'<sup>268</sup> A point emphasised by the following quotation:

'But the Commission often struggled to agree common lines on issues related to the Convention, institutional reform and its own future role. One interesting upshot was that a very powerful culture of avoiding votes emerged under Prodi. Under the Commission's internal rules, any proposal may be put to a vote of the College, with positive approval by a simple majority (eleven of twenty in the Prodi Commission) after which all Commissioners must publicly support the decision, or else resign. Under Prodi, there appeared to be considerably fewer votes in the College than under Santer or Delors, perhaps because Prodi feared exposing the Commission's potential for discord.'<sup>269</sup>

#### 1.2.4.2 THE COUNCIL OF MINISTERS

The Council of Ministers was the main DP bulwark. Originally the influence of the governments of the MSs and their representatives were kept a minimum by the High Authority:

' . . . Jean Monnet regarded governments as minor players in the Community and disdained to deal with any national representatives other than ministers . . . Yet this understanding of the role of the supranational authority was an underestimate of the powers that the six MSs were resolved to retain.'

Indeed the Council only came into being as a result of Belgian and Dutch<sup>270</sup> concerns about the non democratic nature of the ECSC:

'Monnet's supranationalism now came under further attack from those who disliked the idea of his High Authority being free from control by elected politicians. The Dutch chief negotiator, Dirk Spierenburg, called for an intergovernmental "watchdog" to supervise the High Authority.'<sup>271</sup>

Forced to accept the Council, the Monnet Method then came into force to deal with it with the proposal for qualified majority voting (QMV) which then allowed for the fragmentation of the Council so that France and Germany could not outvote the other countries.<sup>272</sup>

Despite QMV the "success" of Monnet combined with the failure of the EDC and EPC and the difficulties of the ECSC to actually control Coal and Steel industries when MS backing was present, finally led to a strengthening of the intergovernmental position. As stated earlier the EEC treaty saw the Council grow in importance; 'The new Communities' institutional frameworks emulated that of the ECSC but with a stronger Council of Ministers and a corre-

<sup>268</sup> See note 112 Nugent, (2000) p.296

<sup>269</sup> Peterson, J. *The Prodi Commission: Fresh Start or Free Fall?* in Dimitrakopoulos, D. (ed) *The changing European Commission* p.37. (2004) Manchester, Manchester University Press p. 22-23

<sup>270</sup> See note 48 Stevens; Stevens (2001) p.220 in part

<sup>271</sup> See note 138 Booker; North (2005) p.56

<sup>272</sup> *ibid* p.56

spondingly weaker Commission.<sup>273</sup> This was in part due to, ‘ . . . the seeming over ambition of the ECSC High Authority under Monnet’s presidency,’ which had resulted in the fact that, ‘ . . . supranationalism had acquired a bad name . . . ’<sup>274</sup> QMV was available but not used, and up to the present day on more important issues MSs stick to unanimity, according to some the majority of the time despite the SEA unanimity is in practise used.<sup>275</sup>

The forces of DP closed around the Monnet Method and the Commission; ‘The Council also helps to ensure respect for the democratic functioning of the system, insofar as each of its members is politically responsible to the national parliament . . . ’<sup>276</sup> This sounds good and was no doubt well intentioned but in practice the executives of MSs often, if not usually, ensured that the parliaments could not or they themselves did not inspect the legislation prior to the ministers’ voting. The scrutinising of the end legislation by the parliaments also seems to have been inadequate.<sup>277</sup> The Council has used and to some extent uses the budget and the expertise of COREPER to rein in the Commission and restrict its size. But the Method resulted in the Council itself being fragmented by the sectoral concentration of the project. It seems that the executive, like the officials, is rather easily lured into complicity with the various aspects of the Method.

The Council is stated to be extremely fragmented,<sup>278</sup> divided up into various policy sectors with all the problems that that brings in terms of accountability and transparency.<sup>279</sup> Some of the sectors no doubt emerging in an evolutionary ad hoc manner as spillovers of one sort or another occurred.<sup>280</sup> The Council is fragmented owing to the sectoral Councils of which it consists where most of the business of the Union is performed. Work is divided up into pretty insular sectoral Councils supported by related officials and Commission staff from the DG or sometimes DGs dealing with the sector. The difficulties in coordinating the various Councils and their sectors has had national consequences as well as just Council ones. The Councils can result in a separation of ministers and related officials from the restraints of national cabinet loyalty and accountability. Indeed the notion of ministers and officials desiring power and to be Prime Ministers for a day and carrying out politics aside from the political coercive system of parliamentary control seems all too apparent. Within Councils ministers can and do act often as they think best like judges being rulers in their own courtroom. They can promote those important constituencies for their sector which enable them to get their work done well and efficiently: the stakeholders, lobbyists and officials. The voters of the government and its manifesto can be ignored. The accounts are manifold of ministers agreeing to things in Councils which the cabinets and governments of the MSs themselves would have probably precluded:

<sup>273</sup> See note 104 Dinan, (2000) p. 183

<sup>274</sup> *ibid* p. 183

<sup>275</sup> See note 95 Van Schendelen (2003) p.74

<sup>276</sup> See note 104 Dinan, (2000) p.103

<sup>277</sup> See note 138 Booker; North (2005) p.296-297

<sup>278</sup> See note 110 Kassim; Menon, (2004) p.103 ‘Fourth, given the weaknesses of the Council which is already, with fifteen Member States, a large, unwieldy and complex organization that suffers from problems of internal co-ordination...’

<sup>279</sup> See note 1 Peterson; Bomberg (1999), p.265; ‘Ensuring transparency and accountability remains difficult at the systematic level, in part because very few decisions that set EU policy are taken by policy generalists. The systematic level is dominated by ministers, Commissioners, MEPs and others who are policy specialists.’

<sup>280</sup> *ibid* p. 34; ‘Generally, however, the Council is highly fragmented between policy sectors. It thus reinforces the disaggregated, “sectorised” nature of EU decision making. The proliferation of new, specialised Councils, such as the Audio –Visual, Tourism and Culture Councils, gives ministers who are marginalised in the national capitals an opportunity to be active and assert the interests of the “their” sector... Yet, increasingly, the European Council has become the arbiter of difficult questions. As the Union’s remit has expanded, particularly to include the CFSP and Economic and monetary Union, the General Council has become both overloaded and by absurdly crowded agendas and overshadowed by the Council of Economic and Finance Ministers.’



‘The ministers in the Council and the civil servants in the working groups tend to have, first of all, loyalty to the perceived interests of their own national ministry at home. Policy competition between ministries at the national or, as in Germany, the sub national level is often continued or begun at Council level. The competition may even extend to other Councils when the ministers experience a lack of congruence between their policy tasks at home and those at Council level. For example, a national ministry of transport may find to its chagrin that the dossier on Working Hours for Truckers is handled by the social Council, that is by the minister and the civil servants from a competing ministry at home . . . this partially explains why frequently more than one domestic minister shows up in the same Council meeting and why the country often prefers to abstain from voting, if a vote is taken at all. Such a vote could reveal embarrassing internal divisions.’<sup>281</sup>

And again:

‘Thirdly, the Council meetings are used for playing home politics, for example to satisfy the national parliament or to bypass another ministry at home. The environmental Council in particular, in taking decisions without them being discussed by nationally based ministries, has acquired a reputation for this . . . The Council’s polycentric character and its limited functions make it, in a daily practice, more a meeting of competitive stakeholders than that of dominant shareholders. Some centripetal forces keep the competition under control . . . by co-ordination ministries at home a national government can limit competition with them at Council level . . . all this may be possible, and it happens sometimes and to some degree, but the centripetal forces at home are usually particularly weak. For example the civil servant in a working group may act as a self instructed trustee for the minister or the national co-ordination may simply be too late.’<sup>282</sup>

The UK government seems to have strengthened the cabinet office to curb this tendency of ministers with their excessive loyalty to their sector, which can only increase, whilst they are at a sector Council amongst likeminded and motivated counterparts from other MSs. But this does not seem to be the case in Germany for example. It seems to be a fair enough question to ask as to whether or not MS governments would accept the decisions reached by their ministers in the Councils if a complete cabinet discussion and vote were allowed after the event and allowed to have retrospective effect. Unfortunately there is a tendency in most MSs for sectoral fragmentation and thus most ministers and COREPER are often acting in a vacuum. The Union via the Councils and the voting procedures do a lot to fragment, divide up, MS governments still further.

It is interesting to note not only that the fragmentation process continues into the MSs themselves<sup>283</sup> but that it is accompanied by a removal of a large amount of policy from effective accountability. Not only are the divisions between MS domestic ministries increased by the Council but also the integration process has fragmented the area of public policy dramatically. What was once a fairly united whole, which the national parliaments could force some degree of accountability over, is now fragmented into that which is oriented towards Europe and that which is not, and so to that over which the parliaments can decide and supervise and that which they cannot. As more sectors have been absorbed into the EU so they have been removed from the national legislative oversight remit of the parliaments. This obviously weakens the legislature and by removing large elements of its jurisdiction from it, increasingly empties the UK notion of parliament being supreme of meaning. Voters are voting for less

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<sup>281</sup> See note 95 Van Schendelen (2003) p. 76

<sup>282</sup> *ibid* p.78

<sup>283</sup> See note 23 Wallace; Wallace (2000) p.528

and less in a national context, their votes are losing their value, democracy losing its value, and the big winner is the executive and finally the bureaucratic arm:

‘Integration has also affected national democracy by removing important areas of public policy from within the ambit of national parliaments. All national parliaments have difficulty in holding their national ministers accountable for what they do at a European level. Moreover, the technical nature of much EC legislation tends to enhance the power of the expert over the politician. Most decisions are taken by delegated officials . . . There is a weakness of political accountability in the EU system caused by the institutional balance, the technical nature of decisions, the lack of transparency about how decisions are reached . . .’<sup>284</sup>

Another form of fragmentation is the emergence of multiple roles for national political actors. In a sense they are expected to be all things to all men, to represent MSs and the EU at the same time; ‘Almost all actors in the EU policy process have multiple identities, and may play multiple roles.’<sup>285</sup> That tension, contradictions and confusion often result seems inevitable, that these were worse at the beginning of the EEC before the actors and their institutions gradually began to merge the approaches to the issues in the interest of shortcutting and efficiency also seems self explanatory. Again, stating that roles were split, that fragmentation was involved in integration processes is not meant pejoratively. For partial reconstruction there must first be partial dismantling. The cost will affect the ministerial level in particular which has additional tasks whilst the number of ministers remains strictly limited. More officials can be employed and have been as COREPER shows, and national offices which deal directly with the EU but the accountability holders have not been multiplied. It seems inevitable that multiplying roles for ministers in particular will lead to greater discretion for officials both in the MSs and in the Councils.<sup>286</sup> What is more a loss of effectiveness, coherence and direction which traditionally political leadership provides will result from the officials, serving various Councils, deciding policy. The creation of the European Council after a long period of COREPER and Council activities and an apparent lack of EEC effectiveness reflects the need for leadership and direction.<sup>287</sup>

The Monnet system was always a non democratic venture, if only on a temporary basis, with its emphasis on officials and their skills; but the extent to which the executive arm of government has merged with the bureaucratic is astonishing. Over 80% of the work of the Council is completed by COREPER<sup>288</sup> with only a portion of what remains even considered by the ministers. Interestingly enough over 80% of the work that a Commission official puts into a text of legislation will often remain unchanged, presumably both organisations are remarkably in agreement and no doubt in close contact before hand. Regarding the ministers’ input:

‘Alan Clark, who recorded in his diary his first Council as a junior trade minister, he was coached on “the line to take” by an official of the UKREP, the UK’s permanent representation in Brussels, before she set about rewriting the speech he had been planning to make. “Not that it makes the slightest difference to the conclusions of a meeting what ministers say’, he went on : “ . . . everything is decided in advance, horse traded off, by officials at COREPER . . . the Ministers arrive on the scene at the last minute, hot, tired, ill or drunk (sometimes all of these

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<sup>284</sup> See note 104 Dinan (2000) p.326

<sup>285</sup> See note 23 Wallace; Wallace (2000) p.529

<sup>286</sup> See note 100 Rometsch; Wessels (1997) p.230 ‘Given the number of participants in a normal Council session, national ministers often feel an element of control is being exerted by their national civil servants, especially when they come from other ministries. One way ministers have sought to avoid this and enhance the possibility of agreement has been through de facto institutionalisation in 1994 of informal meetings-the so called “Gymnich formula”...’

<sup>287</sup> See note 132 De Schoutheete, (2002) p.22,23,24.

<sup>288</sup> See note 138 Booker; North (2005) p.295



together), read out their piece and depart.” Another minister described how, when he arrived at his first Council, he was startled to see that the first item on the agenda was the communiqué to be issued when the meeting was finished. When he protested to his officials that this should surely come last, after the rest of agenda had been settled, he was condescendingly told, “oh no, minister, all the other items have already been agreed at last week’s COREPER.”<sup>289</sup>

Usually a proposal for legislation will originate in a MS ministry, continue via the Commission and COREPER and be implemented by the same ministry and similar ones in the MSs, democratic control exists in the ministers, whose ministries brief them and the EP to some extent. The same proposal for legislation could, of course, follow the normal route to the minister first who could then suggest it go to the Council, however usually this is not the case. Which seems to suggest that the more effective route for the national ministries to see their proposals acted upon is to deal directly with the EU, thus ‘The most remarkable achievement of this new system of government had thus been the extent to which the power to make the vast majority of laws had been transferred from politicians to officials. The only useful role left to the politicians in this process was to lend it a veneer of democratic legitimacy.’<sup>290</sup>

One last point, regarding the Council and the problems of DP with it; as long as there was a national veto in the Council of Ministers over policy then, openly, there was little at that level that the Commission as the active agent could do to alter the balance, but it has constantly promoted the extension of the qualified majority vote and accepted the logic of ever more enlargements. The combination of these two lead to increased possibilities to divide and rule, with the Commission facing ever larger numbers of states in the Council. The desire of the Commission has always been to break states away from the single vote or veto, and into coalitions, pressing them into amalgamations which are easier to mould. What is more it is extremely hard to say who really voted for what and to so identify which actor was really responsible for the passage of a certain regulation. Certainly where accountability is concerned, not that ministers are really held accountable by national parliaments for their behaviour in Councils, it is hard to see how a national voter or parliament can really hold a group of ministers from various MSs responsible. Even when national positions are known, the details are usually not, and neither are the subsequent bargains and compromises. One of the many difficulties is that voters are not voting for the European positions of their MS in the manifesto of the parties or not in depth. How could they, given that outcomes in Europe are so complex and involve so many actors? At best they can be informed about what a party might like to take up with Europe if it has the chance and such statements are going to be even vaguer than the usual political promises.

#### 1.2.4.3 THE EUROPEAN PARLIAMENT

The Assembly of the ECSC, which had appointees from national parliaments on it, was forced on Monnet and his Method by the French finance minister who ‘had then proposed the inclusion of an Assembly, which would retain the ultimate power to dismiss the High Authority, much as a shareholders’ meeting has the power to dismiss a board of Directors.’<sup>291</sup> Other changes had already been taken on board to get the ECSC as far as it had already got.<sup>292</sup> Presumably these were done to assuage some of the domestic concerns about DP which the Gaulists expressed clearly enough; ‘Instead of delegating our powers to a democratic Assembly,

<sup>289</sup> See note 138 Booker, North (2005) p.295

<sup>290</sup> *ibid* p.297

<sup>291</sup> *ibid* p. 56

<sup>292</sup> See note 3 Monnet (1978)p.362-363 See note 18 Wallace (1990) p.75

we are asked to abandon an important sector of our economy to a stateless and uncontrolled autocracy of experts.<sup>293</sup>

When presented with the Monnet inspired EDC in 1952 one year later, the Socialist Group refused ratification complaining about the lack of democracy in it, 'the Socialist Group wanted a "more democratic" EDC, with a European Assembly elected by universal suffrage.'<sup>294</sup> The French leader at this point, later voted for the rejection of the EEC treaty, although it had the potential to be more democratic and intergovernmental than the ECSC, stating 'France must not be the victim of the Treaty. A democrat may abdicate by giving in to an internal dictatorship, but also by delegating his powers to an external authority.'<sup>295</sup>

Although it was not democratically elected to supervise the High Authority, the ECSC Assembly represented an attempt to surround it and control it with some DP. And the story of the Assembly and the later EP has been one of increasing powers as greater integration has occurred. Organically this is logical as the progression of the immunisation would work in the same fashion, provoking from liberal democratic parliamentary systems a healthy response of attempting to surround the growing irritant with increasing amounts of democratic institutions, and / or greater competences for them. The greater the political content of European integration and thus the greater the penetration into the competences of the National parliaments the greater have become the powers of DP.

The history of the EP showed both DP gains but also long periods of executive resistance to allowing parliamentary control. The reasons are several but the trend is that the excessively executive nature of the Monnet Method has led to the ever increasing dominance of the executive and officials in the EU, and finally this has all come at the expense of democracy. The executive and officials represent the first line of DP defence so long as they are answerable to a parliament and remain within the DP model. However, as we have seen increasingly this has not been the case. The forces of DP were activated as was to be expected and a parliamentary body was formed in the ECSC and EEC Assemblies but their hollowed out weakness, as a result of national governments, stands out. The national leaders were the ones to decide to grant the EP a direct mandate and no doubt they were the most important, if not the only, forces to decide not to allow the direct election of the earlier two assemblies.

A process of fragmentation for the Assemblies began almost immediately, more is the pity. Both the ECSC Assembly and the EEC Assembly could have been directly elected from the start and involved the MS electorates in national elections which could have been held together and created a sense of a European identity for subsequently elected parliamentarians and the citizens alike. Instead, for both assemblies, the choice was made for national parliaments to select members, on a national basis, and no doubt, as nationally oriented as the executive, at first at least. It is interesting to note that the MSs were legally bound to carry out elections to the EEC Assembly, but did not. Thus immediately the Assemblies were divided along national as well as, no doubt, domestic party lines. The positive bonus for the Assemblies and DP was that they could make somewhat more real the notion of parliamentary control, insofar as they were able to report back to national parliaments the activities of the High Authority and later the Commission.

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<sup>293</sup> See note 138 Booker; North (2005) p.57 citing Gaullist deputy Jacques Soustelle in Debats A.N. 06.12.1951 p.8881. cited in Werth p.550

<sup>294</sup> *ibid* p.63

<sup>295</sup> *ibid* p.85



Both Assemblies had little real power unfortunately, and the EEC Assembly failed to push for the allocation of power which the Treaty of Rome had foreseen for it. Under the Treaty it was to have an advisory power over legislation which was an increase on the power of the ECSC Assembly which had only had a supervisory role over the High Authority. One can only guess at the reasons for the weakness of the EEC Assembly which led it to fail to press for its legally binding powers. The national parliaments have seen in the EP and so no doubt in the assembly a competitor and not a complementary force.<sup>296</sup> Given the either- or approach for the Assemblies, consisting of either national parliament appointees or European MEPs elected with a European mandate, the national parliamentarians could be seen to have been protecting their rights and competences over their own executives acting on a European level. The strength of a new EP with extremely limited powers and no real backup in terms of a national parliamentary base from which to hold the MS executive to account, would have seen a rather poor replacement for the parliaments and their appointees in the Assemblies. There was, no doubt, also plenty of nationalism at work and also a desire to keep organizational rights. Also there may well have been little incentive for the appointees to strengthen the EEC Assembly which was, quite apart from being pretty powerless, also at best, legally a temporary phenomenon until the legally required elections took place.

The long delay in deciding to create the EP as the Treaty intended is odd. Since the EEC was no doubt sold to the parliaments who ratified the treaty as an EEC with a directly elected parliament, not to grant the Assembly its legal powers seems dubious to put it mildly. As if the democratic part had been reluctantly attached to get it past the parliaments and then quietly ignored. The motives for the national parliamentarians accepting this situation have been considered, but the Commission and MSs accepting the new governmental set up with the fully democratic part noticeably missing is glaring.<sup>297</sup> A partial explanation is that the project itself, as a whole, was not fully achieved and effected, the single market was not achieved until 1992. Also full Qualified Majority Voting (QMV) was late in coming, thus for the EEC as it stood, the Assembly was good enough. However, the Council still retained its full powers and used them and the Commission likewise retained its rights. Thus once again the European level saw an empowered executive and a weak parliament and DP only being represented by the MS executives.

Looked at from the above perspective; the decision to launch the EP as a directly elected parliament in 1979, twenty odd years later is curious. On the one hand, no doubt, it reflected the growing size of the Community budget and the planned political re-launch of the project. But the reluctance of the national governments of the MSs to share the European project with parliaments full stop is shown in the phrasing of the following; 'They agreed that "a European Parliament, elected by universal suffrage, would have to be associated with the development of the European construction."<sup>298</sup> The move from the Assembly to the EP had a sort of organic DP feel about it:

'Giscard's conversion to this project, reversing his party's previous policy stemmed more from political calculation than conviction. For domestic reasons, he needed the support of the smaller independent parties in his national assembly, for whom "commitment to European

<sup>296</sup> See note 104 Dinan, (2000) p.212

<sup>297</sup> *ibid* p.287 'empirical studies suggest that many European policies and practices-for example, the European Monetary System, European summitry (the European Council), and the weak role of the EP-were deliberately undertaken in such a way as to maintain and strengthen executive autonomy.

<sup>298</sup> See note 138 Booker; North (2005) p.160 referring to Commission of the European Communities 1975, Eighth General Report of the Activities of the Community 1974 Luxembourg p.339-346

Integration was an article of faith". Offering an elected parliament for Europe was enough to woo them into his governing coalition.'<sup>299</sup>

The combination of motivations for the direct election, which is shown by the following, stress this organic feel, there was pressure from several sources through the governmental structures of the MSs for the EP; 'Under these circumstances, there was a strong body of opinion amongst governments, notably the Dutch, that national parliaments could no longer exercise effective control over Community finance and that the task should be passed on to the European parliament.'<sup>300</sup> The attitude reflected here is good old fashioned DP in parliamentary form, 'what touches all must be approved by all', in the face of ever increasing amounts of Community independent funding under the category of 'Own Resources.' The Community had the legal right to a share of taxation. It was a parliamentary DP reaction to the increase in Community power.

The MS governments maybe felt forced to act and chose the lesser of two evils, a directly elected but otherwise still weak EP rather than a no doubt strengthened in some other way Assembly. As it was the EP was directly elected but did not see any increase in its legislative powers for another ten years.<sup>301</sup> More formal democracy was required and the more fig-leaf like the better. The EP's right to be consulted was to an extent forced on the MSs by the ECJ in the Isoglucose judgement of 1980 in which the ECJ '... made it clear that Council could not adopt Community legislation before receiving Parliament's opinion, where the treaties require it.' The ECJ was clear that the Treaty had intended there to be a balance between the institutions,<sup>302</sup> which was quite obviously not there and had not been there for twenty years. The EP would take a while to learn its way through the institutional set up and to establish itself. Unlike the Assembly it would have no way of forcing the executive to account, in many ways its powers were as weak as those of the Assembly without the bonus of national parliaments to amplify it and deal with the executive accountability issue. In some ways it was an ideal executive's parliament; it provided the appearance of democracy and accountability without the teeth. Creating the EP on the eve of re-launching the EU<sup>303</sup> with the large amount of legislation that this would involve might seem cynical. European legislation, in ever increasing amounts, could be enforced domestically on the basis that it had been democratically agreed upon, indeed the whole EU apparatus could be sold domestically as democratic and parliamentary whereas the EP was far too weak to be able to provide such an assurance. Another point is that the MSs were probably also aware that the Assembly members were intergovernmentally oriented like themselves and probably more fixated on their national ministers in the Council. The supranational EP with its supervisory powers over the supranational Commission would be fixated on the latter; 'Institutional developments within the Union have also served to enhance Member State control and to limit the influence of the Commission. The further strengthening of the European Parliament (through the extension of co-decision to seven new areas) in the Nice Treaty is one example.'<sup>304</sup> Yes, the EP could give the Commission some semblance of democratic legitimacy, but given the extenuated lines of accountability this was and would be weak.<sup>305</sup> Whatever assistance that the EP gives in adding some democracy to the system is weakened by its position institutionally and lack of a powerful mandate; 'The democratic credentials of the EP are weakened by the low turnout in EP elections

<sup>299</sup> See note 138 Booker; North (2005) p.178 referring to George, S. (1990)

<sup>300</sup> Shackleton, M. *The European Parliament* in Shackleton, M and Peterson, J (ed.); *The Institutions of the European Union*, (2002) Oxford, Oxford University Press p.97

<sup>301</sup> See note 300 Shackleton; Peterson (2002) p.97

<sup>302</sup> *ibid* p.98

<sup>303</sup> See note 138 Booker; North (2005) p. 161

<sup>304</sup> See note 110 Kassim; Menon, (2004) p. 95

<sup>305</sup> See note 173 Shore (2000) p.226. 'The European Parliament is not a legislature, it does not elect a government, and it lacks credibility as the democratic conscience of the Union.'



(58 percent in the 1994 election).<sup>306</sup> This is stressed again in this quotation 'It was under 50 percent in the 1999, matched by a decline in support for EU membership from 73 percent in 1991 to 46 percent in the Euro-barometer report of 1997.'<sup>307</sup>

The spreading EU with its intrusion into ever more spheres of public life and politics in part provoked the constitution and a DP re-balance. DP in the form of national referenda have shown that national democratic perceptions are clearly dissatisfied with the EU actual DP reality. The EP in itself contains not enough DP principles to allow the EU to be accepted by the democratic forces represented in referenda. This will be considered later. Whilst the drawing up of a constitutional DP re-balance is entirely to be recommended and the EU needed and needs more DP, the actual constitution reflects the other trend in the integration process. The problem is the executive build up<sup>308</sup> and that the executive and officialdom are reluctant to share power with parliamentary forces of DP, in particular if those forces are able to really force accountability on it. Thus, the inclusion in the proposed constitution of greater powers and influence of the national parliaments in the legislative process sounds plausible, but in reality might well have succeeded in diluting the power of the EP in more ways than one but above all by adding more actors and or procedures to the EU with the greater lack of clarity and even more complex lines of accountability. The parliamentary forces of DP would have been fragmented rather than reinforced. The national element would be reintroduced to the European level where it is inappropriate. One could almost wonder whether the EP has been too successful in its activities and strengthening its role and this is the reason for the MSs playing the card of adding in national parliaments. What is lacking from parliaments is the ability to force accountability and responsibility on the European level executive, in particular the MSs and their executive members. This most basic of parliamentary powers is weak enough in national parliaments but almost non-existent in the EU. The big winner from the constitution would have been the executive and in particular the MS executive members, and the suspicion has to be that the executive will do whatever it can to avoid the radical overhaul that would leave it facing a real parliamentary system, demanding protection for taxpayer's money and an end to those vested interests like those surrounding CAP and the Structural Funds.

#### 1.2.4.4 THE EUROPEAN COUNCIL

The European Council's creation in 1974 was a step in the MSs and, initially at least, DP gaining control over the general direction of the Community. The political leaders of the MSs were now to be involved in the Community on a regular basis and not just in the founding of it. Initially at least, the Council started out as part of the trend of MSs seeking other more effective methods of doing business outside the 'blocked' Community channels. De Gaulle and the impasse with Hallstein had led to a weaker Commission and a less efficient one as well. The perennial problem for the MSs is how to have efficient channels to do business in and just enough supranationality to guarantee policies without encouraging a political rival,<sup>309</sup> which could be argued from a de Gaulle perspective, to have been behaving like a parasite, drawing powers and competences away from the MSs. The channels were blocked but they were also perhaps better so, given the potential the Commission had showed, any new

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<sup>306</sup> See note 145 p.325

<sup>307</sup> See note 173 Shore (2000) p.19

<sup>308</sup> See note 104 Dinan, (2000) p.103 'Indeed, the history of integration is of the progressive shift in the centre of gravity toward the representatives of the states. This tendency, which can be traced both in texts and in action, reached its high point in the TEU.'

<sup>309</sup> Peterson, J. *The College of Commissioners*. in Shackleton M and Peterson J (ed.) ; *The Institutions of the European Union*, (2002) Oxford, Oxford University Press p. 82

system would require greater MS control than had existed before, presumably especially for the French but also for the new entrant Britain.

Implicitly, there is the sense that the ministers in the Council had not been coordinating their activities well. Although the following quotation was written with regards to the recent situation the fundamentals are unlikely to have changed over much; 'The Council's polycentric character and its limited functions make it, in daily practice, more a meeting of competitive stakeholders than that of dominant shareholders. Some centripetal forces keep the competition under control . . .'<sup>310</sup> under these are listed COREPER, the General Secretariat, the General Council and the European Council.<sup>311</sup> The latter seemingly 'can overcome stalemates among and inside specialised Councils. By co-ordinating ministries at home, a national government can limit competition with them at Council level.'<sup>312</sup> Certainly some of the work done by the European Council is to locate possible "package deals" and construct them from ' . . . transectoral compromises,' in particular between MSs in disagreement.<sup>313</sup> Some, around the time of the founding of the European Council thought that 'the heads of state and government would undermine the Commission's monopoly of the right of initiative, would downgrade the Council of Ministers to some kind of subordinate chamber and would effectively circumvent the limited rights of the European parliament.'<sup>314</sup> In some respects the European Council is the top Council of a 'pyramid' of Councils and their officials represented by COREPER and the Council of Ministers.<sup>315</sup>

The summits attended by the European national leaders, in part owing to the failure of the supranational institutions, had had a distinctly negative slant on the Community and its methods; it was only after considerable pressure and lobbying by small states that the Commission President was allowed to participate in them at all.<sup>316</sup> The European Council grew out of similar summits and gradually became more formally recognised over time and it can be suspected that the attitude of the MSs was similar in these. Observers of the time were equally critical about the development of the European Council for the integration process:

'Observers of the integration process noted its creation; 'There the European Council, composed of the political masters of Council members, is given responsibility for providing the EU with "the necessary impetus for its development," and for defining "the general political guidelines thereof" (Article D, paragraph 1(TEU)). The earlier doctrine that characterised the Commission as the "motor of European integration" is displaced. Accordingly, the "decision making process evolving in the Community gives a key role to governments."<sup>317</sup>

The MSs seemed to be taking the Community over and introducing large new doses of inter-governmentalism into them.<sup>318</sup><sup>319</sup> And yet, soon enough, there seemed to be plenty of integra-

<sup>310</sup> See note 95 Van Schendelen (2003) p. 78

<sup>311</sup> See note 132 De Schoutheete, (2002) p.22,23,24

<sup>312</sup> See note 95 Van Schendelen (2003) p. 78

<sup>313</sup> See note 104 Dinan, (2000) p.189

<sup>314</sup> *ibid* p.190

<sup>315</sup> See note 95 Van Schendelen (2003) p.75

<sup>316</sup> See note 18 Wallace (1990) p. 81; 'Yet the overall impression, inside as well as outside the European Community, was of institutional ineffectiveness and *lourdeur*. Increasingly, the major European governments dealt with each other and with the United States through channels outside the formal structures of the European Community. The most significant of these, from 1974, were the annual Western Economic summits attended by four of the Community's heads of government and after some hard lobbying by the smaller member states by the President of the European Community.'

<sup>317</sup> See note 104 Dinan, (2000) p.103

<sup>318</sup> See note 132 De Schoutheete, (2002).

<sup>319</sup> See note 30 Edwards; Spence (1997) p.2



tionary activity going on.<sup>320</sup> In practice it was not long before the Method drew the leaders into the project and in its characteristic manner:

‘It may well require considerable time and energy on the part of the national leaders, but the further development of the EU is highly dependent on this summit-style of bargaining. On such occasions, the heads of government and state find themselves, contrary to their nature, in situations where they are forced to discuss concrete formulations in great detail. It is only by discussing the technical details of a text that the real political issues upon which there is disagreement can come to the fore, and it is only then that the tough decisions can be taken.’<sup>321,322</sup>

The process is familiar; it is once again the Monnet Method at work, the method of breaking major issues down to the level of details. Only now there is the acceptance that the details reflect political problems and not a de-politicisation of them. Any naïve functionalist belief in technocrats being able to rationally solve details with political issues stripped away that there might have once been was gone. Only now the leaders of MSs had been reduced to the level of technocrats and forced to abandon their expertise in coordinating others, and instead they have to be coordinated to reach agreement on details.

Appeasing the leaders’ desire to achieve historical grand schemes was achieved in granting them their right to give the Community general direction.<sup>323</sup> The ability of the project to attract, provoke ministers and leaders to ‘take it over’ at critical times and to place their names on its activities was first carried out with Schuman when Monnet let the supranational project seem to be his creation. The European Council seems to follow in this tradition with the Commission allowing and working with the Council on the grand direction of the Union, and so to an extent satisfying the leaders need to be or appear to be in control. The extent to which this is and was a deliberate strategy is not entirely clear but there seems to have been a clear proposal made by Monnet promoting the concept of a ‘Provisional European Government’ to replace the summits which he found not to be satisfactory. Arguably the leaders took the bait and allowed the grand notions connected with the European Union and European Council to sway their judgement.<sup>324</sup> However, given the track record of the European Council acting in much the same ambivalent manner that the MSs always have towards the Commission and the supranational federal solution, the creation of the European Council, which was not included in any of the formal ‘Community’ constitutional set up, and is still only marginally so, seems to have been again a case of MS leaders accepting the grand project whilst ensuring that that their control was increased as a result. Whether this would have pleased Monnet in the long run seems doubtful. One last point about the European Council’s right of setting the general direction of the EU; what was implicit has become explicit in the post Maastricht era, the Commission’s monopoly of legislative initiation has been ‘restricted’ whilst the European Council has become more assertive.<sup>325</sup> Furthermore, the leaders, when possible, use the powers of the EU to achieve unpleasant but necessary goals domestically without the political costs that this would inevitably result in.<sup>326</sup>

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<sup>320</sup> See note 132 De Schoutheete, (2002) p.32

<sup>321</sup> See note 104 Dinan, (2000) p.189

<sup>322</sup> See note 1 Peterson; Bomberg (1999), p. 274

<sup>323</sup> See note 3 Monnet (1978) p.287 and note 1 Peterson; Bomberg (1999) p.255 a winning combination that de Gaulle began and Mitterrand continued.

<sup>324</sup> See note 138 Booker; North (2005) p.160, 161, 162

<sup>325</sup> See note 110 Kassim; Menon, (2004) p.90

<sup>326</sup> Smith, M. *The Commission made me do it* in Nugent, N (ed) *At the heart of the Union*, second edition, (2000) Basingstoke, Macmillan Press p.175

The above points indicate that the MSs in the European Council have been reasonably successfully co-opted into the supranational project. The decisions of the seemingly 'intergovernmental' European Council have proven to often be quite integratory in their nature:

'Far from being the champion of a realist, state-centric approach to European Integration, the European Council will continue to exemplify the pooling of member states's policymaking tools and decisions. The European Council can, therefore, be seen as a manifestation of the way in which the interdependent welfare states of Western Europe have chosen to integrate their activities and instruments in virtually all areas of public policy in order to meet the overall economic, social, and foreign policy expectations of their electorates.'<sup>327</sup>

This has been noted by others.<sup>328</sup> This leads to the paradoxical conclusion; 'Accordingly, the European Council is as much a symbol of the member states' struggle for unity as a manifestation of their obstinacy.'<sup>329</sup> Most of the institutions of the EU represent this, they are 'manifestations' of MS 'obstinacy' and desire to contain and thus control supranationalism as a political force benefiting the Commission in particular, whilst wanting unity and integration for themselves. The overly simplistic idea of integration as being the work of the devoted few ignores its attraction as a common good to the many.

That said, a lot depends on the character of the Commission and its President. An over effective President and a Commission which appears to have over played its hand and striven for too much political profile, will result in a European Council which is more controlling and suspicious about it.<sup>330</sup> So whilst Delors worked well initially with the leaders and had them very much on board, in the nineties the pendulum swung back after the Commission pushed too far for both some leaders and their various publics. The weakening of the Commission's powers in the Maastricht treaty is stated to show this attempt to 'rein' it in.<sup>331</sup> The European Council is described in less rosy terms, from an integrationalist perspective:

'More broadly, throughout the decade, the Member States asserted their authority and institutionalised their leadership over the direction of integration. IGCs became more frequent. Their agendas were longer, the level of detail greater, and their expansion into policy more extensive. The Commission was relegated to a secondary role . . . The volume and scope of business transacted at European Councils also increased. In policy matters, heads of State and Government no longer concentrated only on high politics, nor limited their attention to troubleshooting. Instead, there was evidence of "creeping competence".'<sup>332</sup>

It is interesting to note that one academic is quite explicit about the sort of political manoeuvrings that go on between the MSs and the Commission and how one side 'learns' and then adopts a new strategy:

'The Member States . . . were re-orienting the Union in an intergovernmental direction. Through a process of "learning", Member States had become increasingly wise to the Commission's ability to exploit possibilities of expanding EU competencies. Since Maastricht, they have shown far greater vigilance in institutional matters, limiting opportunities for entrepreneurial expansionism on the part of the Commission.'<sup>333</sup>

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<sup>327</sup> See note 104 Dinan, (2000) p.190

<sup>328</sup> See note 132 De Schoutheete, (2002) p.32

<sup>329</sup> See note 104 Dinan, (2000) p.190

<sup>330</sup> See note 110 Kassim; Menon, (2004) p.92

<sup>331</sup> *ibid* p.90

<sup>332</sup> *ibid* p.91

<sup>333</sup> *ibid* p.92



The European Council continues its ambivalent career as pro integration but not pro an overly politically powerful Commission. What seems clear enough is that the MSs and European Council have and have had the potential to effectively block the Commission institutionally when required.

#### 1.2.4.5 ECJ AND LEGAL FRAGMENTATION

Legally the European project is a model of first fragmentation and then re construction. Fundamentally the European Court of Justice created a new legal system by its act which added another judicial level to those already in existence arguably, at the cost to the national courts which had dealt with international issues reasonably before. MS legal actors abruptly found themselves no longer supreme but also possible defendants in a court where they were on a similar level to the companies who could challenge them. National jurisdiction was split in a sense to allow the new European sphere of action. National courts, like ministers, found themselves having their roles split, so they could have to act as effectively European judges where legislation of EU origin was involved,<sup>334</sup> where the highest Court was the ECJ, or as national judges as before in the national context where the national court hierarchy remained in force. National courts saw direct effect and supremacy set the ECJ above national courts and legislation of a European origin above national legislation. The move was political which made it difficult for any effective legal response to be made against it, when a law court makes a political move which creates a legal system and sets itself up as the supreme arbiter of that system. The response of MSs to the Gend and Loos case and challenge was unsurprisingly rebutted by the ECJ. Only a full scale political crisis and new treaty could possibly have remedied this situation. On the positive side the goals of the Monnet Method seem to have been met in the ECJ which first by declaration in its judgements effectively fragmented legal systems and created a European layer, but at the same time it welded these together into a cohesive, coherent whole. It was, maybe, the first really fully empowered supranational institution as the supranationalists would have approved.<sup>335</sup>

That said, as a short digression, the ECJ has something of a fragmented and mixed governmental nature. From a purely legal perspective it seems dubious for the ECJ to have created the new legal system which should belong to a legislature or clearly consenting states. Supposedly the establishment of an international jurisdiction requires the express consent of states in the context of the decentralised international legal system. In the Gend and Loos case several of the MSs concerned seemed to be fairly clear that the teleologically arrived at interpretation of the ECJ, was not what they had intended and consented to when they signed the treaty, it also does not to have been expected by any of the founders of the Community.<sup>336</sup> The ECJ interpretation certainly seems to have been a political interpretation of the 'facts'; and there are other interpretations.<sup>337</sup> The Court the Member States seem to have intended to

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<sup>334</sup> See note 1, Peterson; Bomberg (1999) p.45; 'Similarly, the evolution of the Community's legal system was not foreseen by the EEC's founders, nor was the central role of the ECJ in EU decision making (Alter 1998). Community Law has been expanded and strengthened largely through the co-opting of national courts and legal administrations (see Armstrong and Shaw 1998; Dehousse 1998)

<sup>335</sup> *ibid* p.46-47.

<sup>336</sup> *ibid* p.45; 'Similarly, the evolution of the Community's legal system was not foreseen by the EEC's founders, nor was the central role of the ECJ in EU decision making (Alter 1998). Community Law has been expanded and strengthened largely through the co-opting of national courts and legal administrations (see Armstrong and Shaw 1998; Dehousse 1998)

<sup>337</sup> The teleological argument proceeds along the lines that the MSs founded a Common Market which could only function effectively if a legal system was in place to enforce it. The problem with this logic is whether the MSs did indeed consider the Common Market to be the goal, or was it rather a political statement of intent. Was the Common Market element not a useful reason to work closer together, to extend trust and co-operation. It was merely a useful vehicle and form to express these desires and intentions. The ECSC was still in existence and so kept the danger of war aside and it had taught the MSs

found, at least going by the treaty they signed, seems to have been more of a neutral mediator than a Court,<sup>338</sup> particularly when the following is considered; ‘ . . . the Court could declare that the member state had failed to fulfil its treaty obligations, but no sanctions or penalties could be levied.’<sup>339</sup> A court with no real enforcement capabilities seems problematic if not a contradiction in terms.

### 1.2.5 THE IMMUNE SYSTEM’S METHODS OF ARRESTING AND DISSOLVING THE COMMISSION

We have seen that containment of the Monnet Method was the first approach used by the host’s immune system to deal with the organization that seemed to be becoming a threat. The next stage we will see involves the immune system coming to grips directly with the threatening organization. The immune system of the body does not just cause the lymph glands etc to swell to contain the pathogen but it will also generate the means to arrest the pathogen and dissolve it. The pathogen will not remain inactive, it will try to hide and re-invent itself. This is the subject of the following section.

The reactions of the Commission to its rejection by the nascent European body politic in the 1950s, 1960s and 1990s are revealing. The rejection of the Commission by de Gaulle led to the bureaucratisation of the Commission; ‘The Luxembourg compromise had led to a lack of coherence within the Commission itself, reinforcing the increased bureaucratization of its operations, with a resultant adverse impact on efficiency as well as morale.’<sup>340</sup> Accompanying factors were from 1967 onwards ‘collegiality and cohesiveness declined and bureaucratic pressures exerted themselves.’<sup>341</sup> This is exactly as has been apparent in the Commission recently. Increasing bureaucratisation is also due to the Commission accepting managerial tasks which require different skills to those of policy making, but the reason for it accepting these tasks seems to be linked to the desire to compete with MSs and also a sense of insecurity and wanting to appear like a normal bureaucracy. Certainly, its skills are more in the field of policy making than policy management, but given less scope for policy making maybe it had less

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that it was quite possible to have a project that failed to achieve its economic goals, but could successfully serve important political ones (See note 104 Dinan, (2000) p.181), which is no doubt what they wanted to ensure came of the EEC. The Common Market element was not popular when it was agreed upon, and many of the MSs signed it for the political reason that it was a gesture that symbolised German French reconciliation (See note 104 Dinan, (2000) p.183). The irrelevance of the economic aspect was shown by the suspicion of the German finance minister Erhard who wanted for economic reasons a looser economic association with a wider membership, he was over ruled by Adenauer who wanted the political bond between Germany and France. The fact that of ten fundamentals in the preamble six of those mentioned stress political and social aspects and only four are explicitly about the Common Market underlines the MSs’ political preoccupation. Article 2 stresses again that the Common Market has a merely facilitating role to achieve higher political social goals. There is a real sense that neither for the supra-nationalists nor the MSs was the EEC about a Common Market, it was always a political tool. To use Monnet’s perspective, the project would get people around the table working together, negotiating, finding common perspectives and goals and that was the main intention, which is why the treaty ; ‘provided no more than general guidelines and statements of principle,’ (See note 104 Dinan, (2000) p.183). The Common Market seems like heads of state swapping well thought of gifts or hostages, to show their good will and intentions, rather than setting up a trading route or slave trade, requiring detailed rules and a system of control to run it.

<sup>338</sup> The role of the ECJ in the EU system, from a purely treaty based perspective, is oddly legal if the usual notion of a court is considered. Usually courts make judgements which can be enforced, until 1991 there was not the possibility of financially sanctioning the Member States at all, and it was the TEU which returned the possibility of fines being issued. In fact it is stated; the ECSC had had the possibility of fines being issued with Council approval, the EEC removed even this option. The legal system that the MSs seem to have agreed upon and desired was one where the Court could advise them and appeal to their peers but not sanction. This combined with the fact that the treaties were so deliberately vague, that the court could, several years after the treaty was signed, fit a legal system between the lines, does not seem to support the view that the MSs consciously agreed on a new binding European legal system. Rather it supports the notion that they desired an independent umpire to act as a focus for other MSs to stand behind. In its generation of new, treaty based non enforceable, procedures more akin to the Commission which generated unenforceable neutral proposals. The use of bench marking by MSs seems to be more what they expected and desired to happen with the EEC and the ECJ.

<sup>339</sup> See note 104 Dinan, (2000) p.191

<sup>340</sup> See note 30 Edwards; Spence (1997) p.3 and note 146 Donnelly; Ritchie (1997) p.45

<sup>341</sup> *ibid* p.7



choice than might seem to be the case. The ECSC went through a similar problematic period and behaved in a similar manner as will be seen.

When the Commission is idealistic and has a charismatic MS politician at its head it can achieve much and seems at its most political, cohesive and in general united and the MSs seem on the contrary disunited. Once however the Commission presses too far and too fast as it seems bound to do, then rejection follows swiftly:

‘In addition, there is a curious disjuncture between Member State suspicions and the reality of the Commission’s role and ambitions . . . the Commission no longer has the ambitious, imperialist aspirations that arguably characterised it under Delors. The obsession with control that they reveal implies that member States have failed to take this on board . . . The Member States’ assertiveness, their determination to circumscribe the Commission’s power and impose their control . . .’<sup>342</sup>

After the Hallstein period the MSs representation became stronger in the Commission<sup>343344</sup> and remained a problem as was stated in the Spierenburg report 1979;<sup>345346</sup> The report stressed ‘ . . . the importance of the national dimension as a major cause of fragmentation.’<sup>347</sup> The same seems to have happened after Delors.<sup>348</sup> The reasons for this are that the Commission has proven itself too effective and attracts attention from MSs to use the new power it has for their own uses, and also to ensure that they are warned earlier the next time round. There is of course also the suspicion that the MSs want to be able to stop expensive legislation and policies which are potentially damaging to them within the Commission, whilst of course also protecting the policies which they benefit most from. But above all the MSs seem to want to apply the brakes to the Commission.

But that rejection is not complete and the overstretch of the Commission has its purpose in preparing the way, by placing further integration moves on the agenda, breaking the ice as it were and then tactically retreating to let the moves seep into the MSs and sectors and onto their agendas, ready for the next integratory step.<sup>349</sup> Traditionally bureaucrats, and the Commission was and is no exception, enjoy long memories, longer than the short lived politicians period of power, and the Commission can re-introduce once controversial integratory moves into an environment which has been slowly accepting them as inevitable and probably positive (the October 2006 attempts to re-launch the EU constitution fit into this tradition). The move is the same but the climate has changed.

The MSs have the right to choose the College of Commissioners and President. The link between the leadership, in particular the President, and the ‘plight’ of the Commission as a whole, and thus the power of the MSs’ choice has been shown time and again in EU history and the link between the ‘environment’ and the choice of the President.<sup>350</sup> The MSs’ choice is usually, in part, made by the preparation for an integratory period set up by Commission hard

<sup>342</sup> See note 110 Kassim; Menon, (2004) p.102

<sup>343</sup> See note 146 Donelley; Ritchie (1997) p.44-45 and Dimier, V. *Administrative Reform as Political Control Lessons from DG VIII, 1958-75* in Dimitrakopoulos, D (ed) *The Changing European Commission*. (2004) Manchester, Manchester University Press p.82

<sup>344</sup> See note 36 Daugberg, (1999) p. 422.

<sup>345</sup> See note 41 Metcalfe (2000) p.826. ‘Dissatisfaction with the Commission’s performance prior to the 1999 crisis attributed inefficiency to excessive bureaucracy...and the intrusion of national interests into personnel decisions and policy making.’

<sup>346</sup> See note 148 Page. (1997) p.36

<sup>347</sup> *ibid* p.36

<sup>348</sup> See note 110 Kassim; Menon, (2004) p.100

<sup>349</sup> See note 40 Mazey, S and Richardson (1997) p.191 and 184

<sup>350</sup> See note 110 Kassim; Menon, (2004) p.101

work. Commission lobbying resulting in the selection of Delors began in part by the MSs' appetites being whetted for more integration in the form of the Single European Market.<sup>351</sup> The time and political environment were right and ready to allow, and pressurize, for a Commission President who would head the next integratory period, Delors.<sup>352353354</sup> But that does not mean that they expected what Delors in fact did when in his new institutional setting, far from it as a member of Delors cabinet stated with regard to 1985 and 1991 and the changed views of the MSs:

' . . . Before we could count on being ahead of other people strategically. We knew what we wanted and they were less clear, partly because they did not believe that anything much would follow from the decisions we asked them to make. Now they know that we mean business and they look for all the implications of our proposals. There are huge numbers of new things on the table and it will be much tougher from now on.'<sup>355</sup>

The MSs seem to have been taken aback and finally reluctant to go along with Delors projects. The forces of DP came into play, provoked by the bureaucratic identity of the Commission; 'Paradoxically, it was because Delors was the first Commission President to act charismatically in the broader sense of the Weberian term . . . that his presidency highlighted the Community's problematic democratic credentials.'<sup>356</sup> The peoples of Europe and those representing them were not prepared to allow this.<sup>357</sup> Thus, after a major period of development and a dynamic leader the MSs apply the brakes by putting a political layer in place in the College of the Commission which will effectively shut it down; Hallstein and Delors were, after their successes, neither reselected to head the College again, and other European enthusiasts were likewise turned down.<sup>358359360</sup>

When the immune system latches onto a diseased cell; an antibody fixes onto the cell wall and turns it from being an incubator to being a prison. The insides of the cell may well then begin to disintegrate and any foreign body with it. There seems to be a clear cycle present in relation to the appointment and selection of Presidents.<sup>361</sup> The selection of a less dynamic Commission President will act like the antibody does to the cell.

The next stage after the non reselection of a dynamic President of the Commission is that increasingly MS appointees are placed ever deeper in the organisation.<sup>362</sup> When the MSs succeed in arresting its supranational development by removing its leadership and reducing its ideology drive,<sup>363</sup> built as it is on MS willingness to allow 'supranational' achievements to occur in the first place, as they did after the Hallstein and Delors Commissions, they also auto-

<sup>351</sup> Lawton, T. *Uniting European Industrial Policy* in Nugent, N (ed) *At the heart of the Union*, second edition, (2000) Basingstoke, Macmillan Press, 2000 p.132

<sup>352</sup> See note 104 Dinan, (2000) p.419 As a result, by the early 1980s pressures were mounting within the EC institutions and the private sector to address in a comprehensive and systematic fashion the problems created by the "incomplete" internal market. Thus, the circumstances were right when Jacques Delors assumed the presidency of the Commission in 1985...

<sup>353</sup> See note 168 (2000) p.245 'Delors' leadership, while logical given the Community's design, represented (and was represented as) both an overestimation of the extent to which the peoples of Europe and their leaders felt inclined to enter into ever closer union...

<sup>354</sup> See note 30 Edwards; Spence (1997) p.13

<sup>355</sup> Ross, G. *Jacques Delors and European Integration*, (1995) Cambridge, Polity Press, p.137

<sup>356</sup> See note 168 Drake (2000) p.245

<sup>357</sup> *ibid* p.245

<sup>358</sup> See note 30 Edwards; Spence (1997) p.5

<sup>359</sup> See note 1 Peterson; Bomberg (1999), p.40-41

<sup>360</sup> See note 309 Peterson, (2002) p. 82. 'The legacy of Delors continued to haunt Brussels, both in terms of the political aversion of many member governments to a powerful Commission'

<sup>361</sup> See note 23 Wallace; Wallace (2000) p.536

<sup>362</sup> See note 176 Kassim (2004) p.37

<sup>363</sup> See note 110 Kassim; Menon, (2004) p.102



matically it seems begin a penetration of the Commission. They attempt to place their nationals deeper into it and to promote a natural dissolving of the multinational, supranational 'pathogen', by dissolving it into nationalities.<sup>364</sup> They do this when the desirable inoculation of some supranationality and greater cooperation and coordination seems to them to have been replaced by the virulent strain of federalism and political ambitions of the Commission. These more openly political moves of the Commission are more easily countered by the political MSs which can recognise political competitors for sovereignty.<sup>365</sup>

Usually there is a sense in which the MSs feel that enough has been achieved for the moment and maybe it would be better to remove the dangers of a federally minded, over political Commission possibly for good. The MSs have had as much Europe as they can digest and sell domestically.<sup>366</sup> Economic downturns accentuate this awareness and restrict the grand projects of the leaders. Dramatic new projects offering the possibility of a lot of legislation are no longer on the agenda. Idealism and charismatic leaders in the Commission's history run together, remove one and you remove the other. The beginning of the slow down sees a disintegration of the Commission internally into warring DGs and a breakdown in coordination and communication. The Monnet Method 'carrier' can fall foul of it as well. Fragmentation can work internally as well as externally with DGs pulling apart. It is and was a generally known fact in political science that parties which lose power are in danger of splitting apart, disintegrating. Loss of power results often in loss or removal of the leadership and a free-for-all to acquire the remaining resources and try for the top post. It is likely that the MSs knew this and hoped as much when curbing the Commission in the Maastricht Treaty and then the removal of its dynamic leader.

The Commission for its part, 'hides' from the immune system and also thereby seals itself off from the intruding MS influences. Its normally little used bureaucratic potential is then dramatically increased. This serves multiple purposes firstly sealing it off from external influence; secondly allowing it to restore control over the elements into which it has increasingly become dissolved and thirdly it turns a dynamic political-bureaucratic competitor of the MSs into something more akin to a MS bureaucracy, or the Council's secretariat, something that is not a threat anymore. It has hidden its proto-federal governmental form extremely effectively from view, but more on that in a minute. The reduction in the sizes of cabinets by Prodi seems a response to their becoming 'mini Councils.'<sup>367</sup> The porous body of the Commission would be and is a liability to an extent in this situation and for survival purposes needed to be modified. The Commission reforms with their merit enforcement also places promotion back in the hands of the Commission and not the MS networks within it; loyalty can thus also be strengthened to the Commission. Finally, this all results in increases in rigid bureaucracy which results from the energies of the Commission which were put into generating legislation and bureaucratic tasks for the Community now being directed against itself. Bureaucratisation in the Commission is thus generally used to try and regain control of its various elements which also results in rigidity.<sup>368</sup>

The Commission in its reclusive phases then becomes more bureaucratic and shy of political 'intrusions' even though these will form the next stage in the revival phase; the MS appoint-

<sup>364</sup> See note 62 Spence (1997) p.98. 'There are thus opposing potentially disintegrating trends; national quotas and balance, parachutage, sousmarins, cabinets, piston, seconded national experts, posts reserved for certain nationalities etc.'

<sup>365</sup> See note 168 Drake (2000) p.247

<sup>366</sup> See note 195 Dinan; Nugent (2000) p.263

<sup>367</sup> See note 110 Kassim; Menon, (2004) p.99

<sup>368</sup> See note 265 Spence, (1997) p.104

ees in the Commission are gradually won over to a new loyalty<sup>369</sup> much as happens in MSs themselves and all the MS defences against the Method:

‘A reverse process of gradually penetrating national ideologies can be supposed to get underway . . . If permitted to operate for any length of time, the national groups, now compelled to funnel their aspirations through federal institutions, may also be constrained to work within the ideological framework of those organs.’<sup>370</sup>

Monnet was aware of the defensive bureaucratic tendency to shut out beneficial political contacts and its danger:

‘His opposition to the bureaucratization of the Commission, at all levels, including the College of Commissioners, was based on his perception of its growing habit of reacting, “suspiciously and fastidiously to intrusions of the political world upon well ordered administrative action” with all the dangers that that entailed for the Commission’s role as the political motor for integration.’<sup>371</sup>

Contrary to Monnet’s worries, in the short term at least, the state of bureaucratization seems to serve the Commission and the other elements of the EU rather well, it slows it down, allows it to effectively hide and regroup and reinvent itself. When confronted by the inevitable ‘political and popular’ backlash of DP it goes from a ebullient ‘excessively maximalist position’ under Delors onto the defensive<sup>372</sup> and effectively adopts a minimalist ‘nuanced and circumspect’<sup>373</sup> approach, reducing or hiding political aspirations and appearing more of a mundane, gradually evolving modern bureaucracy which seems innocuous to the MSs and the European public and not worth acting against. Indeed the defensive turn was a necessity in the Commission’s struggle for survival.<sup>374</sup>

Soon enough though the Commission begins to emerge from its deceptive modesty and develops the momentum for more integration that it set in motion previously. The preparation for this having been made, in part via an agenda setting process and the ‘mobilizing’ of ‘epistemic communities.’<sup>375</sup> The single currency and the Euro elation that that brought and the goal of completion of the Union with a re-launch of European governance with a white paper in 2001 and then a constitutional document with the governance of and surrounding the institutions laid out resulted from the Santer - Prodi Commissions temporary reclusiveness. The bureaucratisation and related reforms never seem to go that deep; they usually remain superficial, and are ignored or subverted by elements in the organisation itself, with the tacit support it seems likely of the top ranks themselves.

A remarkably similar cycle as the above occurred with the ECSC; Monnet the dynamic President resigned in 1955 under French pressure, he had become too much the symbol of over dynamic supranationalism<sup>376</sup> and then a period of bureaucratisation set in<sup>377</sup> with a ‘more hier-

<sup>369</sup> Bellier, I. *The Commission as an actor* in Wallace and Young (eds) (1997) *Participation and Policy Making in the European Union* Oxford Clarendon Press. And

Bellier, I. *A Europeanized Elite? An Anthropology of European Commission officials*. (2000). ‘Yearbook of European Studies 14.

<sup>370</sup> See note 173 Shore, (2000) p.149

<sup>371</sup> See note 30 Edwards; Spence (1997) p.7

<sup>372</sup> See note 195 Dinan; Nugent (2000) p.263

<sup>373</sup> *ibid* p.265

<sup>374</sup> *ibid* p.263, 264 ‘...to the point of having to protect some of its existing prerogatives. Delors was fortunate to be able to deflect an attack by some Member States (and by the EP) on the Commission’s exclusive right to initiate legislation, and an overture to allow the Council to amend Commission proposals by qualified majority instead of unanimity.’

<sup>375</sup> See note 40 Mazey, S and Richardson (1997) p.184, 191

<sup>376</sup> See note 104 Dinan, (2000) p.348



archical, functionally segmented bureaucracy.<sup>378</sup> A good summary of the plight of the ECSC follows:

‘As Gerbet has observed, the supranationalist principle of the High Authority was in fact rapidly eroded by national cleavages and sectoral conflicts within the executive. Such divisions were most visibly reflected in the development of cabinets within the High Authority which tended to be used by member governments and sectoral interests as a vehicle for promoting national interests within the ECSC. Predictably the internal divisions which developed in the High Authority reached down to the administrative level. Here, national and sectoral cleavages were reflected in the introduction of national quotas governing the allocation of administrative posts, and increasing functional specialisation within the bureaucracy.’<sup>379</sup>

It could be argued that the EEC was the next stage in integration which emerged from that state of the integration project.

#### **1.2.6 MOTIVES AND PERCEPTIONS OF THE ORGANIC HOST(S), THE EUROPEAN POLITY -THE MSs**

Now we will consider the motives and perceptions of the organic hosts in all this in greater depth, after all why have they gone along with integration and how should that ‘going along with’ be considered. One group, the Liberal Intergovernmentalists, claim the major successes in the European project to be the work of the MSs and point out that they are present at every stage in the process as legislators, implementers, proposers of legislation to the Commission, members on the various committees that advise and supervise the Commission. Not just that but they also apply pressure on the Commission and EU via stakeholders in their own states; they are also often lobbied first by stakeholders and then apply pressure in the Union organisation. This view of the role of the MSs has the support of some eminent academics; ‘It has been national governments which have borne the burden of formal integration.’<sup>380</sup>

Supranationalists, on the contrary, claim that the Commission has itself made moves which led to integration and not the MSs, or they grant the MSs a less important role. What seems to be the case, is that an extremely useful role of the Commission and the European project has been to force and provoke the MSs to make determined effort to take back control over the project and to clamp down on the Commission. It has both lured MSs into projects and goaded them. This may have been Monnet’s intention that the Method would finally stimulate a reaction from the MSs at a European level although this can be doubted as has been said. The Commission’s provoking function is enshrined in the current legislative procedure which has the Commission making a proposal to which the Council and EP respond, their response is in effect institutionally provoked from them.

Most of the governmental structures of the EU have been the final, ‘formal’ work, not of the Commission but rather the MSs, the existing European body politic. They have negotiated and signed the treaties and struggled to control or increase their involvement in the project at various times. The motives of the MSs are complex, as was suggested earlier, senior politicians enjoy and desire grand schemes and the notion that they have more power over other countries.<sup>381</sup> There is also the tendency of MS leaders, as heads of the governmental executive, to wherever possible increase the power of the executive over and against that of the legisla-

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<sup>377</sup> See note 40 Mazey, S and Richardson (1997) p.183

<sup>378</sup> *ibid* p.183

<sup>379</sup> Gerbet (1992), Ritchie (1992), Mazey (1992) referred to see note 40 Mazey, S and Richardson (1997) p.183

<sup>380</sup> See note 18 Wallace (1990) p.98

<sup>381</sup> See note 1 Peterson; Bomberg (1999) , p.273

ture. In many, if not most, parliamentary democracies there has been a steady increase in the power of the government and executive usually at the expense of the legislature-parliament.<sup>382</sup> The following quotation examines the attitude of the executive to the legislature in EU matters:

‘European policy making is an elite process, into which non-governmental organisations, the EP, and national parliaments and opposition parties intrude, without succeeding on most policy issues in attracting much wider public attention.’<sup>383</sup>

More motives can be identified to explain why top politicians sponsor the European project, firstly some degree of pure idealism is involved and this would appear to be the case where Helmut Kohl was concerned and also Mitterrand. Speaking about Chancellors and Prime Ministers, there is a real sense that they also became more involved in the project to attempt to reassert their position and authority over the actions of their executive and individual ministers.<sup>384</sup>

MS politicians like Hallstein have played, in a different manner, another important role in the European project, they have provided the political raw resources necessary for the project to live and grow. These individuals enjoyed extremely close contacts to the political leaders of the day and had held top, politically significant positions in their states. They were embedded in political administrative networks in the MSs. MS executives have been the ones to appoint their skilled, top players to the European project. Thus the project in its more successful moments has been a product of political skill often at an intergovernmental level and not just a technocratic success story.<sup>385</sup>

The motives of the MSs are usually supposed to be negative towards supranationalism and voting procedures and vetoes are supposed to reflect this. More formal QMV procedures is a sign that MSs are behaving in an increasingly supranational manner and QMV<sup>386</sup> seems to be increasing. MS’s willingness to use QMV then shows that their motives are pro integration. If they try to keep or use their veto this is supposed to mean the opposite. However the reality is more complex. As has been stressed the MSs constantly make the EU theirs, reclaiming it repeatedly and reinforcing their ownership whatever other rhetoric is expressed by both sides.<sup>387</sup> So the MSs, with their more inter governmental mind-set, as opposed to the supranational organisations, are said to have taken over the European project whilst at the same time they have accepted, formally at least, more QMV, odd. Monnet was stated to have said that ‘. . . cooperation meant nothing unless national vetoes were curtailed.’<sup>388</sup> Contrary to popular belief vetoes and voting procedures seem to be more symbolic than anything else. The existence of the veto seems to have been, initially at least, not a problem at all for integration:

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<sup>382</sup> See note 104 Dinan (2000) p. 287. “Empirical studies suggest that many European policies and practices—for example, the European Monetary System, European Summitry (the European Council), and the weak role of the EP—were deliberately undertaken in such a way as to maintain and strengthen executive autonomy. Cases of the EU’s serving as a scapegoat for national policies or being exploited as an efficient and legitimate institutional means of achieving certain domestic ends are widely cited through the literature, not least recent efforts to impose fiscal austerity in Italy, Belgium and Germany. This resource-based model helps explain institutional characteristics of the EU, such as the acknowledged existence of a democratic deficit—a situation in which EU policy is perceived to be under less firm democratic control than domestic policy—which in this view is no unintended consequence of integration but a deliberate strategy” (Moravcik, 1994).

<sup>383</sup> See note 23 Wallace; Wallace (2000) p.533

<sup>384</sup> See note 132 De Schoutheete, (2002) p. 23,24

<sup>385</sup> See note 18 Wallace (1990) p.106 and 107

<sup>386</sup> See note 95 Van Schendelen (2003) p.61

<sup>387</sup> See note 104 Dinan, (2000) p.103

<sup>388</sup> *ibid* p.346



‘Marjolin saw the period 1958-65 as a sort of honeymoon and one particularly productive “in that the proposals made and put before the Council of Ministers were certain to get a favourable reception or, in any case not to encounter an outright veto which would have left no room for negotiation.”’<sup>389</sup>

Furthermore, up until the SEA and then the Maastricht Treaty any voting procedure but unanimity seems to have been rare. At least one author considered that intergovernmentalism was the rule until the SEA and that the Commission had become little more than, ‘... a kind of secretariat for the Council.’<sup>390</sup> Indeed even since then it is stated that actual voting is ‘relatively rare.’<sup>391</sup> On the contrary the governments strive ‘... to find positions that all could accept.’<sup>392</sup> Whatever the theoretical possibilities for different voting procedures ‘... the conventional political wisdom in most (member states) urges governments to get broad agreement on major political acts even if the constitutional rules might allow for a narrower margin of majority.’<sup>393</sup> Whilst it is probably true that knowing that formally QMV is a possibility will stimulate MSs to reach agreement whereas maybe the Veto would have the opposite effect, equally the SEA and other major steps in integration have occurred owing to the MSs recapturing of the project despite the possibility of using an empty chair procedure or veto.<sup>394</sup> In the agricultural field, even after the SEA, the formal acceptance of QMV still left MSs threatening to use the empty chair Luxembourg compromise method to block legislation:

‘Although the Treaty of Rome states that agricultural policy decisions can be adopted by the use of qualified (weighted) majority voting, the norm in the Council of Farm Ministers has been to make decisions which are “acceptable to all Member States and to the Commission, if necessary leaving some Member States room to vote against without blocking the decision-making process.”’<sup>395</sup>

And:

‘The Single European Act adopted in 1987 extended the use of qualified majority voting to other spheres of Community competence. This development has raised questions as to whether the Luxembourg Compromise is still in force. It has not been abandoned. For instance, in 1988, the Greeks successfully threatened to veto the CAP price package and the French declared in 1992 that it could still be used and threatened to use it in 1993.’<sup>396</sup>

The MSs, or at least the MS governments, have learnt to see the usefulness of the project and to realise that it is and was not as dangerous as they had imagined. They have gone native in a real sense. EU decisions are very much their decisions, and reflect their views.<sup>397</sup> Vetoes are often not in place but they do not need to be owing to their having been updated into a more

<sup>389</sup> Marjolin (1989) p.314 quoted see note 30 Edwards; Spence (1997) p.6

<sup>390</sup> Dankert, P in see note 160 Craig; de Burca (2003) p.15

<sup>391</sup> Wallace, H. *The Institutional Setting* in (eds) Wallace, H and Wallace, W. *Policy Making in the European Union* fourth edition (2000) Oxford, Oxford University Press p.19

<sup>392</sup> See note 104 Dinan, (2000) p.104

<sup>393</sup> Keohane and Hoffmann, (1991) p.149 in see note 302

<sup>394</sup> See note 195 Dinan; Nugent (2000) p.256, 257

<sup>395</sup> See note 36 Daugberg, (1999)

<sup>396</sup> *ibid* p.421

<sup>397</sup> See note 23 Wallace; Wallace (2000) p.529. ‘Neither Commissioners nor Commission officials entirely abandon their national links and loyalties in making policy, as our discussions of agriculture, of fisheries, and of trade in particular make clear. Most Commissioners are recruited from national governments, and many return after their term in office to national political life. National political leaders take their turns in the Council Presidency, and play their EU wide representative and policy roles in most respects conscientiously; they value the national prestige which they gain from being seen to act successfully on a wider stage. Ambitious national officials work for periods in Brussels, in Commissioners cabinets, in Commission services, or in their government’s permanent representations, learning to balance national perspectives with institutional roles. Outside experts and Interest group leaders see themselves as players on both national and European stages...’

cooperative achievement of unanimity, with differences of opinion being ironed out either in the Commission or COREPER. Integration it could be argued has more to do with MSs getting familiar with the system and developing trust in it and experiencing successes in it than it does with any supranational developments alone. Indeed some might argue that the Commission is not even necessary for integration and that it has in fact been detrimental for some positive integration at times, certainly there seems to be room for some to doubt that integration is the exclusive success of the Commission.<sup>398</sup> The development of the European institutions were vital props for confidence building and so integration; the High Authority and Commission, for example, provided the perceived neutrality and security which were so vital for MSs to gradually trust each other and work together. The veto worked in a similar manner; it allowed the MSs to move closer together with a perceived sense of security and to trust the new cooperative system more; one New Member State official who was in favour of greater integration in theory stated the sense of relief and reassurance that they had sometimes that, in theory, the veto could be used as a brake. It seems more than likely that without the existence of the veto even less integration would have occurred than has in fact been the case.

The theoretical antipathy between the supranational organisations and the MSs has over time proven an illusion; the MSs accept supranationality in theory and will act in accordance with it but not when forced. So to sum up, there are a range of 'safeguards' which the MSs have insisted on over time but never seem to use or only extremely rarely. These have been interpreted as set backs for the integratory movement and in particular those federalists who typically '... believed that interests, loyalties, and power must lie at one level or another: to be retained by states, or transferred to a new entity.'<sup>399</sup> The much maligned veto and subsidiarity are two of these safeguards which immediately spring to mind; both represent more a reassurance prop and indication of the formal level of willingness to integrate than they do the real integratory situation. After the SEA the veto still existed formally, but informally was simply not used,<sup>400</sup> formally there were eminent observers who thought that SEA was a 'serious setback' for integration.<sup>401</sup> However in practice this was far from the case, informally the MSs were quite prepared for more integration.

There is a real sense in which the veto and other safeguards are aimed at calming the domestic organs of government in particular the national parliaments. These reflect the duality in the term 'MSs' very neatly. At Treaty discussions, MS Heads of State will be more conscious than usual of their constitutional role as defenders of their national parliamentary system and its sovereignty after all future national parliamentary debate that will have to be carried out prior to ratification.<sup>402</sup><sup>403</sup> The national position will have to be sold in parliaments, and media attention will be at its highest. In many MSs overtly handing over sovereignty is political suicide, in countries like the UK the main parties will be split in their views about Europe. That said, quite apart from awareness about potential parliamentary difficulties in ratification, the Heads of State and their ministers will have their own personal reasons for not formally weakening their parliaments constitutional discretion; they know that there is real danger that they will be in opposition in the future and that their only power will be that which is 'formally' derived from the parliament in question. Therefore formal surrenders of real sovereignty will be more limited than informal ones. At a Treaty signing conference the Heads of State are ex-

<sup>398</sup> Pollack, M. *The Commission as an Agent* in Nugent, N (ed) *At the heart of the Union*, second edition, (2000) Basingstoke, Macmillan Press p.125

<sup>399</sup> See note 23 Wallace; Wallace (2000) p.530-531 discussing the federalist enthusiasts for a United Europe and the Neo Functionalists.

<sup>400</sup> See note 160 Craig; de Burca (2003) p.21

<sup>401</sup> Pierre Pescatore ex judge see note 160 Craig; de Burca (2003) p.20

<sup>402</sup> See note 3 Monnet (1978) p.286

<sup>403</sup> Moravcsik (1998) quoted see note 132 De Schoutheete, (2002). '...a succession bargains between the bigger member states, based on national interests, domestic politics, and the constraints of world environment.'



pected to be both championing the national corner, protecting its constitutional position, whilst also promoting that of the Union. The Commission can be formally constrained again by a clause which will keep it politically impotent and distant from the national demos, with the excuse that the national parliaments and demos require it. Thus treaties usually contain improvements for integration process, efficiency combined with formal mechanisms for preventing Commission political presence in the national demos and keeping it under control.

The differences between the Council and Commission in terms of their being supranational or not seems somewhat artificial at times. The following quote seems to imply this quite clearly:

‘The Community system, as Wolfgang Wessels describes it, has become “a golden triangle of Community civil servants, national civil servants and interest groups . . . based on elite interactions, trust and reputation, by people whose loyalties remain primarily national but modify their expectations and behaviour to hold this valued system together.”<sup>404</sup>

The Council was considered to be a Community organ which became intergovernmental after the Luxembourg accords up until at least the early 1980s.<sup>405</sup> With QMV, in theory at least, some authors consider it now to be pretty supranational,<sup>406</sup> which shows an organisation which has gone from being, theoretically, reasonably supranational at the signing of the Rome Treaty through a period of intergovernmentalism back to being more supranational again. The Commission is also not the supranational bulwark that it is perceived to be. The political direction of it, the Commissioners and Cabinets are affected by national interests<sup>407</sup> as well as holding to organisational loyalty and loyalty to the European project as a whole.<sup>409</sup> Some would go to the extent of saying that cabinets are very oriented towards national interests.<sup>410</sup> This is not the place to go further into the presence of ‘intergovernmental’ elements in the Commission; the important point is that supranationality or willingness to put the Union’s interest first or to preserve it at least, is present in the Council and the Commission.<sup>411</sup> The reality for every official is that they are MS citizens as well as European ones and that some in the Commission, maybe more than in the Council, hold to the project and its idealism or at least organisational loyalty, and the same applies for COREPER and the Council members. All of them are subject to the same pressures of discussion, proposal and compromise and the need for awareness of other national positions. One of the major advantages listed often for the multi-national officials of the Commission and the Commissioners maintaining close contacts to their national governments, is to enable meaningful discussion to take place at every level of the EU. The vast number of committees and Councils that surround the Commission and with which it is in constant communication reinforce the need for awareness of the national positions. It could be argued that much of the Commission’s work with the committees: Management, Advisory and Comitology, which are at the heart of its operations involve in-

<sup>404</sup> Wessels, W. quoted see note 18 Wallace (1990) p.98

<sup>405</sup> Dankert, P. in see note 160 Craig; de Burca (2003) p.15

<sup>406</sup> See note 95 Van Schendelen (2003) p.61

<sup>407</sup> See note 23 Wallace; Wallace (2000) p.529.

<sup>408</sup> See note 1 Peterson; Bomberg (1999), p.76 ‘Moreover, the Commission began to reveal itself as a highly fragmented bureaucracy and really a political system in itself. Despite their oaths of neutrality, individual Commissioners often found themselves supporting their own Member States when decisions had to be taken as to whether internal market rules were being violated.’

<sup>409</sup> See note 148 Page. (1997) p.114-115

<sup>410</sup> *ibid* Commission official quoted p.126

<sup>411</sup> See note 18 Wallace (1990) p. 79 ‘The establishment of the European Communities as a focus for authoritative and effective decision making over a limited range of policy areas brought together an increasing number of national ministers, officials and interest group representatives. Once assembled, these people exchanged information and opinions on subjects beyond their immediate agenda, and acquired habits of constructive bargaining as they were socialised into continuing groups. The linking together within a formal framework of rules and rulemaking of the geographically and economically central countries of Western Europe, in the pursuit of a range of economic and political objectives, changed the context within which their neighbours approached international cooperation.’

tergovernmentalism (Comitology committees are explained at length in the conclusion chapter). The Commission official is chairing the committee, yes, but in a minority of one. Since a large amount of proposals for legislation come from these committees and a tiny amount of proposals are really initiated from within the Commission, it might be argued that the Commission works for intergovernmental organisations. Ironically the experts on these committees are the real technocrats with mastery of detail and the Commission official has the 'political' advantage of the overview. However, the experience of officials seems to be that the committees are far more collegial and the sharp division of interests that might be expected simply rarely happens.<sup>412</sup>

Less ideological positioning and greater clarity in definitions in general would be helpful for the debates surrounding the EU. Both Liberal Intergovernmentalism and the supranationalists offer a coherent account of the integration process. If both sides are blatantly opposed then the contradiction seems glaring. But it seems to be far more the case that supranational solutions were increasingly in vogue with MSs. An all too often forgotten fact is that the EU is the result of constant intergovernmental bargaining which often results in more supranationalism. If the EU had not have served national interests at various stages it would never have been founded. In such an environment it is inevitable that almost every aspect of EU history, policies and politics has intergovernmentalism stamped all over it, of course it does. Its very founding came down to a deal whereby the French got military security; the Germans got some sovereignty and recognition and the other members gained economically. One of the first major policies created under the EEC was the CAP very much a French national interest, in return the Germans gained markets for their industrial goods and so on.

There were politicians in the MSs who were drawn to the supranational ideal but equally the evidence gathered by Millward seems to show that even individuals like Adenauer were often quite hard nosed about their national interests as well.<sup>413</sup> They were drawn to and at the same time suspicious of the useful elements of the project. Like any sound individual they tried to take the positive whilst reducing the risks from the negative. That the ECSC finally began was due to deft political manoeuvring but also because the supranational idea served national interests; 'Rather than relinquishing sovereignty to a supranational authority, European statesmen hoped to use European institutions to augment the capacities of their states and to enhance their abilities to win the allegiance and support of their citizens.'<sup>414</sup> Some might argue that it was always a covert means of ensuring French influence,<sup>415</sup> economic and foreign policy goals.<sup>416</sup> Supranationalism serving national foreign policy in a similar manner to war as foreign policy by other means as Clausewitz pointed out. Like warfare and its officialdom the military; supranationalism was useful but also dangerous. There is no doubt some truth in the allegation that the French dominated the EEC, for all its alleged neutrality.

There seems to be plenty to suggest that the MS politicians treated supranationalism with the same suspicion that they traditionally did their armies. It would and should be controlled by them and should serve each national interest in much the same way as the army. It was essential but, like the army, had its own agenda which would always be expansion and greater con-

<sup>412</sup> Interviews with Commission Officials: DG ENV

<sup>413</sup> See note 1 Peterson; Bomberg (1999) p.255 'One important implication is that a rigid conceptual distinction between 'national governments' and 'supranational institutions' is unsustainable. On the one hand, national leaders may become so acclimated to EU decision making that they may appear to act on the basis of "supranational ideology", or the perceived need to strengthen European structures, even as they seek to defend national interests.'

<sup>414</sup> See note 326 Smith, (2000) p.174

<sup>415</sup> Fransen, F. *The Supranational Politics of Jean Monnet: Ideas and Origins of the European Community*, (2001), Connecticut, Greenwood Press p.138,139

<sup>416</sup> *ibid.* p.16 'Monnet later saw the Monnet and Schuman plans as ...providing France with a way to restore its sovereignty through setting up a structure to protect its access to resources.'



trol over the state itself and its budget, the same went for and goes for the Commission in its more ambitious supranational moments; although it has had to resort to; 'regulatory policy making' to get around budgetary restrictions.<sup>417</sup> Certainly the French initially saw the supranational method serving a military purpose that usually would have been fulfilled by the army, namely, that of containing a rearmed resurgent German state of whatever size.<sup>418</sup> Given that the army had failed repeatedly to keep the Germans out, supranationality superseded it in this function, particularly in the minds of the French foreign office under Schuman. Political postings or approval of the rank of general in France and in Germany, the flooding of the army with conscripts to keep it democratic, is rather similar to the MS tactic with the Commission with the Commissioners changing regularly with their Cabinets and subject to MS choice and the existence of national quotas of officials from MSs<sup>419</sup> and national securing of important DGs via national flagging methods.<sup>420</sup> Indeed the initial French idea in the 1950s of there being barely any officials in the Commission and rather a constant flow of seconded officials from the MSs bears this notion out.<sup>421</sup> Arguably such a process could socialise the officials to be European but equally behind this stated goal could be the opposite, the Commission would be kept MS oriented.

Regarding national interests, national governments who are perceived to have a set bundle of national interests that they define and defend, but this is wrong. Different political actors will have radically different views about what is in the national interest; parliaments have one interest and the executives another, the former stress representation and accountability the latter efficiency. A vast range of national issues are traded internally and their sponsors struggle to have the right to include them as national interests that should be promoted in the EU. As soon a policy has a beneficial effect for a MS or part of it, it will inevitably come to be considered a national interest of those beneficiaries. These will then ensure that it is considered part of the national interest in future. The ability of officials and Interest Groups, not necessarily in the government, to decide the national interest in their specific field is considerable. Ironically, with the growing interpenetration of the various governmental levels of the EU it is quite possible for Commission officials to propose and manage policies and, via close contact with beneficiaries in a MS, to decide the national interest of a certain MS. This will be more closely examined later but the CAP and Structural Funds (SF) both show these tendencies.

So long as the Commission and the federalists do not push too hard MSs are quite happy to use the supranational solution as another method of bargaining.<sup>422</sup> MSs are fully aware of the need to mix national interest with the Union's in order to have any chance of success.<sup>423</sup> Thus there are a vast range of solutions available in which MSs national interests have been combined with the Union's and the solution with most support by the Commission and the other MSs is chosen. The MSs will also compete for formal Commission support for their proposals, as well as for each others, in the Commission and Council. Informally, the MSs seem to be quite aware of the likelihood of greater integration than what the formal treaty ac-

<sup>417</sup> See note 136 Majone (1991) p. 96 "Any satisfactory explanation of the remarkable growth of Community regulation must take into account both the desire of the Commission to increase its influence – a reasonable behavioural assumption – and the possibility of escaping budgetary constraints by resorting to regulatory policy making."

<sup>418</sup> See note 3 Monnet (1978) p. 293 ; see note 160 Craig; de Burca (2003) p. 8

<sup>419</sup> See note 148 Page. (1997) p. 46

<sup>420</sup> *ibid* p. 51, 52

<sup>421</sup> See note 30 Edwards; Spence (1997) p. 6

<sup>422</sup> Shackleton, M and Peterson, J. *The EU's Institutions: an Overview* in Shackleton, M and Peterson, J (ed.) ; *The Institutions of the European Union*, (2002) Oxford, Oxford University Press 'The Institutions of the European Union'. p. 13 'The desire amongst European governments to make the Union work better, but to avoid a genuine process of state-building, reflects deep rooted hesitation to create an EU that challenges states as the primary loci of political authority in Europe.'

<sup>423</sup> See note 1 Peterson; Bomberg (1999), p. 274 'At times, the system moderates the naked pursuit of national interests only marginally, but there are costs for Member States who blatantly trample the "community interest" in seeking national advantage.'

tually states. This seems rather bizarre, that formal integration seems to proceed at a far more cautious although steady pace than the informal and at times they seem to run rather oddly parallel to each other; the formal with major set backs and dramatic long night sittings and empty chair crises, the other a quiet, calm deepening integration of MS states and a growing use of compromise and EU consensus tools. And yet this parallelism is deceptive the two do work together.

The organisational logic of the vaccine is to drive to maximise its own position by achieving a 'formal' federal Europe as quickly as possible, and to opportunistically try for this and/or supranational-federal governmental elements and policies, which represent steps on the federal road, at every possibility. The deal which MSs, however, seem prepared to make with the Commission allows it to quietly pursue in an informal manner an increasing amount of integratory activities whilst formally its powers remain relatively weak. MS politicians views are reflected in the following; 'Politicians are likely to answer that the system has worked well enough for their purposes, without too visibly or abruptly depriving existing national governments of authority or power.'<sup>424</sup> Formally the Commission will often be blackened with the reputation for introducing unpleasant regulations but informally the MSs allow integration to continue apace. So long as the Commission is not directly elected it cannot really suffer at the hands of the public, unlike the national executives. They do not want to remove the Commission but it certainly doubly serves their purposes that complaints can be directed away from them at the faceless bureaucracy in Brussels, which also ensures that the Commission political ambitions can be continually undermined and its reputation ruined in the eyes of the national demos. To the demos as a whole the simplistic concept is presented of the Commission being kept in check by loyal politicians with subsidiarity paragraphs, vetoes and so on, so that the dangers of integration appear to be controlled but in reality integration spreads with continual extensions of the 'principle' of QMV.

A form of European integration benefits by the Commission accepting its MS inspired role and accruing de facto power as integration spreads and not appearing to be ambitious for political power. But that is not the logic of the vaccine and it could be argued that if the MSs get along over cosily with each other then its very survival is in danger. It is maybe worth asking the question whether or not European integration and supranational political power are synonymous; maybe also whether explicitly 'supranational' organisations are really necessary now that mainstream supranationality resides in MS officials and the Council. What exactly does supranationality actually mean now, has it become a myth which prevents close scrutiny of it? If the term means anything it means in the EU context holding a community perspective, inevitably this will contain elements of national ones too. It has been argued that the Council and officials are quite capable or thinking in terms of the Community now, and know too that this is how things must be done. So if there is a supranational thinking Council in place most of the work of the Commission has been done. It can ensure that this remains the case, but it is unlikely to change, given that the MSs need the current system. It seems that supranationality is confused with federalism;<sup>425</sup> the latter can only have as a goal a federal government, the Commission.

It has to be said that the Commission sometimes seems to be so overly ambitious<sup>426427428</sup> as to be politically inept, so much so that it might be better for it to set aside any ambitions to be

<sup>424</sup> See note 18 Wallace (1990) p.106

<sup>425</sup> See note 168 Drake (2000) p.232 For supranationality here read functionalism.

<sup>426</sup> See note 104 Dinan, (2000) p.184, 104, 261,

<sup>427</sup> See note 233 Calvocoressi, (1987) p.179. 'The crisis arose out of proposals by Dr. Hallstein, the Commission's President, to extend the authority, within the Community, of the Commission and the Assembly at the expense of the Council of Ministers and in particular to expedite the taking of decisions in the Council by majority vote instead of unanimously. These pro-



other than it currently is; 'Hallstein's ambition, coupled with a misreading of his immediate political environment, especially the likely reaction of de Gaulle, led him to go too far, as perhaps did Delors, though in radically different circumstances in the Maastricht negotiations.'<sup>429</sup> Prodi shared similar problems in particular over the European constitution:

'Even those who share the same vision as the Commission President worry that damage has been done to their cause, either because they consider that the timing was wrong or that they believe a more subtle and strategic approach should have been devised . . . In tactical terms, by declaring such ambitious objectives, the Commission President may have committed a serious error . . .'<sup>430</sup>

As a policy making organisation filled with motivated, well qualified individuals it does an excellent job, but as a political organisation it is lacking. Given the slap on the wrist that it got at Maastricht to have then launched the European constitution during a period of economic downturn and enlargement anxieties was asking for trouble at the best of times. It is hard to think of a time when variant national interests are so closely linked to and defined in terms of national sovereignty and awareness of it in the national demos' than at major Treaty and Constitutional conferences. National teams in football competitions stir similar nationalistic sentiments. That any integratory steps occur at these times is remarkable, maybe these happen just enough so that national audiences have of a sense that their governments are winning and being successful. Maybe it is also the presence of MS politicians, with all their natural desires to make a political splash that will be noticed, at the helm of the Commission, that drives it in the openly political direction. Or more likely its organisational logic and mission simply forces the Commission to behave as it does.

It would seem to be the case that quietly accepting the job the MSs have given it is the best for the Commission's organisational goals of increasing competences<sup>431</sup> and also for its supra-national mission to promote integration; being branded as a future ambitious federal government might appeal to intellectuals but does not seem to assist the Commission very much in its PR with the demos. But part of the deal which the organisation the Commission appears to strike with the MSs is that of useful integration for them in return for the gradual development of political profile for the Commission in every Treaty. This is understandable enough for an organisation that will be the future federal government. The political ambitions of the Commission seem crazy but apparently, after the rejection of the European Constitution in the Netherlands and France, there seemed to be a few indications that the constitution, were it to be re-submitted, might actually succeed and be adopted. So maybe there is method to the madness and the perceived blows to the integratory movement which no doubt relieve many of the anxieties are in fact more noise than anything else. The idea has been broached, the reactions made, duly noted and ignored and the real integration can then start to build to the new goals.<sup>432</sup> After the initial shock has passed the national publics calm down and consider

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posals were a direct challenge to de Gaulle's views and some of Hallstein's colleagues warned him that he was going imprudently fast. Moreover, by presenting his proposals first to the Assembly instead of the Council as the rules provided Hallstein gave de Gaulle an opportunity to put his foot down with some show of justification.'

<sup>428</sup> See note 18 Wallace (1990) p.30. The famous Luxembourg crisis was also largely due to Hallstein desire for symbols of sovereignty

<sup>429</sup> See note 30 Edwards; Spence (1997) p.6

<sup>430</sup> See note 110 Kassim; Menon, (2004) p.101

<sup>431</sup> See note 195 Dinan; Nugent (2000) p.253

<sup>432</sup> See note 1 Peterson; Bomberg (1999), p.56. 'When radical new initiatives are first tabled, they often provoke so much opposition that it initially appears they will never be agreed. Member States frequently attack them to placate threatened domestic interests, as well as to enhance their leverage in later negotiations, before they begin real bargaining. To illustrate the point, all 15 Member States in one way or another denounced the Commission's (1997b) proposals for quite radical changes to the CAP. Yet "what is unthinkable one year may become the root of a crisis the next, and an ingredient in a 'package deal' the third. (Lindberg 1965: 63)

their nationalistic outburst in a somewhat embarrassed fashion, the sober rational need for integration is put as a solution to the rather real and pressing problems. Over time the notion of more federalist moves by the Commission and the EU gradually become less shocking the more times they are aired around Treaty conferences. Maybe the exercise also has a useful cathartic purpose from a supranational perspective, nationalistic emotion is released and gone and a feel good effect sets in after such episodes. Furthermore, the Commission and EU are in the headlines and debated by the various demos' and attain some relevance, the demos' are diffuse but for a brief period all the MS citizens are aware of the European project in a manner akin to a national election or football match. The European Parliament elections, unfortunately for it, have the same lack of appeal and sense of boredom that local government elections have and attract similarly low turnouts and enjoy low media coverage and excitement as 'events'. Their audiences are usually going to be the intellectual and or the conscientious and not the majority. State building requires mass excitement, preferably war to motivate citizens to change and or develop loyalty to a polity, and media attention good or bad combined with excitement is often better than none at all. The supranationalist hope is that there will be enough of a sense of demos at some point to allow the Commission real political power and credibility. The problem is that any change will be slow in coming and real referenda, as opposed to stated sentiments and / or re-votes afterward a referendum has taken place, are likely to stay negative, or possibly get worse if the EU is perceived to be as undemocratic as ever, particularly if re-votes are demanded, and at the same time getting closer to the citizen than before. Of course, so long as the economy seems to be in a problematic state with high levels of unemployment, low growth and the Commission seemingly responsible then its position will worsen.

Whether the MSs really want a demos to form is questionable, whatever their stated positions.<sup>433</sup> This was shown by the apparent lack of concern that some MSs showed with selling the European Constitution even in the face of national referenda. MS governments are willing to participate in treaties where plenty of bargaining can take place but when they have political implications for the Commission in particular, the referenda card is played. Half hearted referenda are sure to be difficult, and putting a divisive matter like European integration up to be voted on in referenda by several states seems to be fairly likely to involve problems. Reintroducing them for better coordinated referenda may allow the treaty to finally succeed but inevitably in the short term the Commission loses its sense of having a mandate. Thus the real motives of national politicians in agreeing to a constitution with associated referenda seem open to some discussion.

MS politicians seem at times to be content with the EU as it is whilst the Monnet Method and its carrier cannot be and are not. If the current state of the EU were positive and politically beneficial then the Commission's restless ambition might seem extremely problematic. If however, the EU is considered not to be positive, and in fact to be overly undemocratic and executive - officialdom dominated and fragmented then the Commission's position that integration is not complete and that major changes are still required in the political field is to be welcomed. That is not the same as saying that a full federal government built around the Commission is necessarily desirable, but it is saying that the vaccine's restless insistence on its mission and goal is beneficial for the EU and its citizens. Oddly enough the vaccine and large elements within the Commission favour federal political power and DP for a European government. The vaccine might be non democratic in some senses, but it provokes DP, and it seems to constantly do this. And it has to be said DP seems to be implicit in the federal government it favours. Aristotle might have said that the organisational potential of the Commis-

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<sup>433</sup> See note 18 Wallace (1990) p.107



sion is that which forces it remorselessly towards a new governmental form in the same way as the potential of a seed to be a plant forces the former to change.

### 1.2.7 MONNET AND STATE FORMATION

We have now been introduced to the immunization theory and its main protagonists, now we have to answer an inevitable query. The astute reader will rightly object and wave the text to a standstill and say; 'but what makes the EU different to any other example of state formation?' The answer to this is that of course some state formation elements do seem to be present but there are crucial differences these are explored below.

The Monnet Method did employ some typical state forming elements<sup>434</sup> and the circumstances in the crucible of historical evolution were those which are commonly associated with state forming activities. That Monnet and the European Federalists tried for full blown state formation is shown by the historical record. The EDC and EPC were both attempts at state formation and floundered on national ratification processes; other major integrationary drives had serious problems albeit often as the result of referenda, and various forms of MS opposition; as with EMU even pro-integration national leaders had their stances altered by their divided nations.<sup>435</sup> Whatever else, after these failures classic state formation was over in terms of directly creating a Nation State structure. Something different would happen and was happening as will be shown. But first to look at the similarities which European integration has with state formation.

Monnet had various strategies available for European State Formation and he made full use of this personal pool of expertise, his friends, much like the organisation he wanted to see up and running. One of his good friends, Salter had promoted the historic example of the Zollverein of 1820 as a useful strategy for state formation.<sup>436</sup> The many German states had agreed to create a reduced customs and tariffs geographical area which could be argued to have assisted in the creation of Germany by Bismarck. The removal of 'the commercial and tariff policy of European states' would he argued 'on effect reduce the latter to the status of municipal authorities.'<sup>437</sup> Whilst the chronology cannot be denied the causality can. It seems more than likely that without Bismarck and his willingness to march Prussia to war three times with the major continental powers of the day and most of the other German states, a damp squabbling squib would have been the result of pan-German nationalism. The states might have been more prosperous and shared a certain romantic feeling for being German but concrete political results would have remained elusive. But the perceived causality was there and it is likely that this idea was involved in Monnet's plans for the EEC, particularly once the more direct approach had failed. Others of course like Spinelli and the Federalists favoured a declaration and constitution which the citizens would be involved in. The Functionalists, with Mitrany as the most vociferous, had concepts which Monnet was happy to mix into his programme. But he was the diplomat statesman, rather like Bismarck, and he was not bound to the non-territorial approach of Mitrany who disliked the idea of a regional institutions which he rightly saw would want to extend their power beyond that intended. This was, though, what Monnet wanted and functionalism could help in dissolving Nation State borders and making way for something else, but that was it.

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<sup>434</sup> See note 18 Wallace (1990) p.30, 'As the British, French, Italians and Germans had done in their deliberate nation building efforts in the nineteenth century, the founders of the EC set out to create new myths and legends to replace the old.'

<sup>435</sup> See note 195 Dinan; Nugent (2000) p.256,257,263

<sup>436</sup> See note 138 Booker; North (2005) p.16-17

<sup>437</sup> Salter (1931): p.92 in see note 138 Booker; North (2005) p.16-17

State formation is closely connected with war and conquest, and certainly a good dose of national bleeding whilst fighting a common enemy serve to weld a nation together and allow the state elements to be added to it. The subsequent gain in nationalism which usually accompanies war is important in state formation. For the European project these have been missing from the start which probably accounts the missing demos. In fact it has been a negative force for war and nationalism and as such perceived by the demos as alien to it and unnatural.<sup>438</sup> Governmental pieces were and are forming a polity but without a joint traumatic event state formation will remain absent. Its very success in its perceived mission has perforce prevented it achieving classic statehood. That the project has had the success it has is owed to the indirect trauma that the MSs and their citizens experienced in the war and the myths which surround the project's beginning; that it alone has prevented another European war and that there was a common European sense of nationhood strong enough to replace or weaken at least the national one. Thus a European identity is not totally absent but as vague and variable as the trauma and experience of war was.

Certain key circumstances for state formation to take place in were certainly present in the 1950s, in particular, war and exported governmental systems. International politics is less readily divided up into historical epochs than historians might like to have it. It maybe makes more sense to see the years between the Napoleonic wars and the 1950s as whole, certainly where causality is concerned. The Prussian and later German predilection for marching on Paris began after Waterloo in 1815 and was repeated frequently up until Hitler's march into the French capital. By warfare, first the French revolutionary armies and then Napoleon broke down borders and then exported an ideology of enlightenment, already familiar to, and held by, many intellectuals throughout Europe, and with it legal administrative methods of government which proved to be a potent mix. French armies were beaten back but the ideology and legal administrative methods, best encapsulated in the Code Napoleon, were directly or indirectly absorbed by many states as an efficient method of carrying out governmental business. War, ideology and governmental improvements of efficiency combined in a variety of forms are useful in state building internally as well as externally. All three seem to be able to have an intoxicating effect on populace and elites which is rather crucial in overcoming the pain of the initial state formation period. The intoxication begins usually with the intellectuals and only gradually trickles down to the populace at large. Governments and elites in power will find the efficiency increases offered by the new system finally to be too tempting to be ignored and will absorb them. This pattern was repeated in the 1950s with a French heir to its rational bureaucratic traditions making the link between war and useless borders, an ideology and governmental improvement, and exporting the current French interpretation of their long governmental tradition to the European dimension. Monnet applied the skills that he had honed as an economic planner during the First World War, when he ran almost the whole French economy, to rebuilding the French economy after the Second World War and after that to the construction of the ECSC. He also seems to have applied his skills in enabling nations to cooperate closely together to fight War to the task of preventing another one: during the First World War he played a vital role in setting up the Allied Maritime Transport Executive, 'the most advanced experiment yet made in international cooperation.'<sup>439</sup>

Given that borders are very important for Nation States few things explicitly mock borders more than war, shocking citizens whose states fail to protect the borders and leaders who are suddenly themselves reduced to the status of servants. Often the leaders of the conquered states will have found themselves serving not just the leadership of the conquering states but also

<sup>438</sup> See note 195 Dinan; Nugent (2000) p.269

<sup>439</sup> See note 104 Dinan (2000) p.346



its civil servants.<sup>440</sup> The bureaucrats in many of the conquered territories remained servants and retained power and influence in good civil service fashion, happily or unhappily able to serve which ever political master was available. Leaders and politicians saw a decrease in their position and status, becoming puppets if they were lucky, or imprisoned if they were not. It was the politicians who lost credibility in the aftermath of the Second World War and were swiftly changed. Bureaucrats, Nazi or not soon found themselves back in power, if they had ever been removed from it. Politically correct or not, it will have been a fact that throughout Nazi occupied Europe bureaucrats had spent years working together to achieve joint European aims, albeit with a strong German slant. The arrival of the American forces 'conquering' or liberating the same states and promoting European cooperation will have continued this collaboration process.

Borders and territorial integrity, essential to Nation States and established States had become irrelevant in Western Europe, which should have opened the way to a new State. Troops and homeless individuals had marched backwards and forwards over borders. Borders did not exist for bombers; ideologies; armies in general so why have them? Indeed with the advent of NATO, the military threat that the borders might have possibly deflected was now projected outwards beyond them to the east. There was a new common enemy and a hegemon with the power to stamp out any trouble between the old Nation States.<sup>441</sup> That the borders and Nation States remained for as long as they did is the puzzle. Militarily the border must be seen to have run globally with the Western coalition protected by a nuclear power, if a military border existed in Europe then it had to be the one between East and West and certainly in terms of troop figures this was the case. Economically the border equally ran in such a manner that it left Western Europe as an 'ancillary to the American economy,' and this continued until 1958.<sup>442</sup> Politically borders were also confused, many of the founding countries of the EU had large portions of their populations who politically-ideologically had more in common with their counter parts in other countries, than with the Communists for example in their own countries. With large portions of domestic populations adhering to an ideology which drew them towards no borders and alliance with the military enemy;<sup>443</sup> the Christian Democrats for example in several states found themselves thrust into each others' arms so to speak.

Revived nationalism amongst elements of the population and self interest amongst the national governmental elites were important reasons for the maintaining of borders. It has to be that there were enough vested interests remaining in the MSs, combined with the habit of institutions to long outlive their functionality, to have allowed the longevity of national borders. They created an illusionary sense of security and identity that was more important than their flimsy reality. But this came at a cost in terms of economic gains by lower tariffs and freer trade across borders. This was clear enough to the Americans who pushed for the removal of tariffs in Europe and proposed a customs union. Their pressure combined with a growing awareness of the new political realities pushed European Countries towards the EEC. In reality western Europe was forced together; 'Social, technical and economic changes ever since then have undermined the autonomy of national governments within the confined geography and dense society and economy of Western Europe, forcing governments to pursue their objectives through common policies, as interaction across borders takes economic and social behaviour beyond the control of any single national authority.'<sup>444</sup>

<sup>440</sup> Interviews with NMS Officials A little aside here, one New Member State official stressed their shock during an interview at how a 'low grade' Commission official had shouted at an elected minister in his state.

<sup>441</sup> See note 18 Wallace (1990) p.42

<sup>442</sup> *ibid* p.42

<sup>443</sup> *ibid* p.39

<sup>444</sup> *ibid* p.103

However, whatever might have seemed logical; that military and economic pressures would have forced a new western European State into existence, it did not happen. In fact, the European Project offered a tantalising solution to the problem of the growing uselessness of borders for many 'new' Nation States. This sounds odd and must be explained. Increasingly throughout the twentieth century the world was fragmenting and European empires breaking up into smaller units with more flimsy hopes of independence and border integrity. The Austrian Empire was the first down after World War One, followed gradually by the rest of the West European countries after World War Two and finally the Soviet Russian Empire collapsed piece by piece. The resultant mass of insecure, smaller states were inevitably far more dependent on each other than the empires had been, but they had some sovereignty. For states like Britain and France it could be argued it came as shock being 'just' Nation States; in some ways humiliating and hard to come to terms with as the Suez crisis made abundantly clear. For them, as much as for the relatively new Germany and Italy, (Germany too saw itself reduced via dismemberment, zonal division and federalism from a German Empire to a federal state with power once more being distributed to regional state authorities) being Nation States was a new experience; their ministers and officials were used to dealing with vast armies of multinational officials in very different countries. For the United Kingdom the first steps of empire building were bound together with the creation of the Nation. England began empire building with the setting up of colonies in America under Queen Elisabeth the First and during her life and at her death the first steps in the creation of the United Kingdom took place too with the increasing occupation of Ireland and the joint crowning of the Scottish King James as the first King of both England and Scotland. The formation of Spain as a concept was first in conjunction with the discoveries of Columbus of the soon to be South American Empire, Castile and Aragon became Spain and a nation under the same rulers who founded the Empire. The British defined themselves often by their empire and its mission and civilisation, bereft of that there has been an increasing question of identity and the gradual dissolving of even the Union. Britain, France and most European States defined themselves by their 'role' in the world, without colonies in a sense adoring them, their cultures seemed to have been hollowed out and have had to be reinvented without the security of superiority gained by being in positions of power.

The physical borders of the empires ran through the world as much as if not more so than just in Europe. It is likely that the British had as many soldiers distributed throughout the empire as were actually defending the channel coast. Certainly psychologically the borders were imperial, with the British feeling more at home in Hong Kong and India than with the French. The 'new' Nation States thus defined could be expected to be confused in their perspective on Europe, and themselves, and so in favour of Monnet's goal of restoring European prosperity and position in the world, and, at the same time nervous and touchy. The relationship between empires and the EEC was reflected in the founding treaties which stressed the importance of the empires and which allowed and still does financial support to be provided to territories which were parts of empires and are still closely related to MSs

'This role was promoted as well as constrained by the rapport de force between Member States during the negotiations for the treaty of Rome and the wider framework set up with regard to the status ('association') of overseas territories. For France, association was an essential condition for the mere establishment of the European Economic Community.'<sup>445</sup>

The large numbers of officials looking for new challenges and used to greater scope for their ambitions than just the white cliffs of Dover or the snow caps of the Pyrenees and ministers in

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<sup>445</sup>Dimier, V. *Administrative Reform as Political Control Lessons from DG VIII, 1958-75* in Dimitrakopoulos.D (ed) *The Changing European Commission*. (2004) Manchester, Manchester University Press p. 76



these 'new' Nation States could be expected to increasingly be in favour of a new project, in a step by step manner matching the dismantling of their empires. Particularly when what replaced them, the British Commonwealth for example was shown to be a weak replacement. This notion seems to be supported by the large number of 'former French colonial administrators' who populated DG VIII (development).<sup>446</sup> Maybe, therefore, it can be argued that supranationality had problems with the Nation Empires with which it,<sup>447</sup> as a potential 'empire' or multi national polity, naturally competed and that the Nation States which gradually emerged from these, step by step, were more in favour of the EEC. With reference to the years (1958-1968); 'These were also the years in which European countries completed their disengagement from empire – sometimes tragically, sometimes successfully.'<sup>448</sup> Indeed real 'supranational integration' is often stated to have happened in the late eighties with the reintroduction of QMV; notably after the end of the European Empires.

Thus the EEC could be argued to have helped the creation of the 'new' Nation States in Europe. Financially and psychologically the French Empire in particular was, initially at least, aided by the EEC.<sup>449</sup> The political profile that France gained within the EEC was of considerable importance to it. Millward has argued similarly that the EEC helped rehabilitate the Nation States after the Second World War by downgrading domestic economic opponents and facilitating the change over to welfare state basis for the MSs.<sup>450</sup> The EEC enabled the MSs to reinvent themselves as welfare states which their citizens naturally felt even closer to than before, thus nationalism would grow. The 'new' Nation States of Western Europe could and would serve as foundation building blocks for the developing polity. The EEC paradoxically initially strengthened its; 'opponents,'<sup>451</sup> but with hindsight, as with the creation of the MS dominated institutions to contain the Monnet Method, this was an essential step towards European integration however unintentional it appears to have been.

European leaders were slow to grasp that the values of the world were gradually being changed and that the USA was economically the new power<sup>452</sup> quite apart from militarily and that money and not military domination of other countries made for real power. Monnet on the contrary had lived in the US and recognised as a businessman the potential of its power. The Wall Street crash and the subsequent economic depression should have made the connection between cash and power very clear but did not. Economics and the market remained low politics for the European countries. Thus Monnet was able to achieve economic integration and potentially improve the financial situation in Europe which was the key to US success.<sup>453</sup> Old fashioned concerns with foreign and defence policy remained and remain high politics and out of reach of supranationality, although they were less important for territorial security, in an age of Nuclear Weapons and transcontinental military alliances, than ever before. The main security threat that concerned citizens and should have concerned governments was that of poverty and economic instability with the potential return of extremist politics, it should have been a high politics issue; certainly the Americans were very conscious of the Communist or return to Fascism threat to the countries of Western Europe.

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<sup>446</sup> Dimier, (2004) p. 76

<sup>447</sup> See note 18 Wallace (1990) p.4 'Britain and France, of course, were still substantial imperial powers, their hesitancy over any irrevocable commitment to a more politically integrated Western Europe partly reflected their continuing extra European ambitions-and their need to maintain national armed forces to protect those ambitions.'

<sup>448</sup> *ibid* p. 43

<sup>449</sup> See note 3 Monnet (1978) p.300

<sup>450</sup> See note 103 Millward (2000)

<sup>451</sup> See note 168 Drake (2000) p.247

<sup>452</sup> See note 18 Wallace (1990) p. 37

<sup>453</sup> See note 415 Fransen (2001) p.3, 4

Following on from the above discussion about the importance of money and the false perception of the MSs that economic matters were low politics it must be added that this was an area where the MS governments were losing or going to lose control anyway. The determination of the US to promote trade and extend markets drove the GATT process forwards and was strengthened by the awareness that protectionism had exacerbated the international situation prior to the Second World War. The days of easy protectionism were over, and the integrity of borders where tariffs and duties were concerned were being and would ever more challenged by the new superpower and the new economic system it was promoting. The MSs were therefore willing to pool their economic interests since they were steadily losing individual value anyway. Forming a regional common market might help counter balance GATT; certainly conversely the USA hoped GATT might counter balance the common market.<sup>454</sup> The ability of the EEC and its key elements like the CAP to create difficulties with rounds of tariff reductions has been shown repeatedly with the Uruguay Round being but the latest where the CAP came close to wrecking the whole process, which reflect the EEC's essentially protectionist potential; a point which was not lost on the MSs.

But often peace in the aftermath war has proven to be important for Nation building, in particular where ideology and war have been combined. Reactionary forces came into play after the Napoleonic war as they did after the First World War as war torn societies almost nostalgically tried to undo the revolutionary effects of the ideology which was now linked to violence and repugnant in the populace's perception. This repugnance was useful for the 'reactionary' victorious power structures. The aftermath of Second World War saw Parliamentary Nation States reinstalled in the West, bringing back into power some politicians who had been dismissed by the previous regimes. Thus in post war Europe there were reactionary forces present particularly in the Nation States, but there was also a European layer of bureaucrats who had never really lost power and now were also to most long lived element of government and ironically the least discredited. The real steps in nation building in Germany and Italy in the nineteenth century came from the reactionary forces of Monarchs. These were often manipulated by their bureaucratic ministers (Bismarck and Cavour) who saw better than they did that more power was to be had by combining reactionary governmental structures with national idealism than by resisting the latter. Clever reactionary ministers were more than capable of getting their political masters and the public to play their parts in planned Nation State building, at times playing the idealism of the latter against the reticence of the former. When performed sensibly, reactionary governmental forms like Monarchy, absolute Monarchy at times, could in fact be strengthened by a bit of state building and idealism. Something similar happened with the Nation States after the Second World War, as Millward argues in his book.<sup>455</sup>

One of the vital elements of state formation has always been the co-opting of the ruling class of the old elements to be involved in the new state. With Prussia the aristocracy were 'co-opted' into the new state; the higher offices and ranks of officer were reserved for Junkers and their male offspring. Eventually some sort of merger between the state and the Junkers took place, with a military bureaucratic ethos as the dominant culture. If the Member States of the EU are considered to be the equivalent of the aristocracy, after all the aristocracy were the regional powers often derived from feudalism, then something similar took place. Monnet's engrenage method of involving officials from all over the EU either as officials within the institutions or as seconded officials working for a three year stint in the institutions served to form the unified bureaucratic whole that can be related to the Prussian situation. Of course not to the same extreme but, via the College of Commissioners, top politicians from the MSs are

<sup>454</sup> See note 104 Dinan, (2000) p.248

<sup>455</sup> See note 103 Millward (2000)



also co-opted into the EU and something similar works with the Council and COREPER<sup>456</sup> and the vast number of officials who visit Brussels or implement EU legislation in the MSs.

The EU has some of the characteristics of the frontier state as described in the work of Siep Stuurman in his work on state formation.<sup>457</sup> To understand this it is necessary to return to the situation of the 1950s. Western Europe was very much economically and militarily an appendage of the USA, the new hegemon. It had gone from being central to a world of empires, to being divided and the respective elements attached to two superpowers whose centres of power were far away. Western Europe was the front line of the West with a vast military force facing it. In the situation of the frontier state there seems to have been a strong aristocracy (Member States) and a weak Monarch or central power. The example of Poland with the Sejm was given in the book mentioned above. In this the regional aristocracy dominated but they agreed to the need to have enough of an organisation to keep their key economic factor, their farmers in check. It is possible to imagine that the farmers to be kept in check by the new collective organisation were the workers and Communists, often one and the same, and the employers' organisations and cartels that dominated Coal and Steel.

The weak Monarch is an interesting notion. Certainly the EU institutions are weak in the extreme and deliberately so. The 'aristocrats' of the 1950s only wanted to give the EU the minimum power necessary to achieve its task. Hobbes's notion of Monarchy is useful here when explaining the creation of that essential element of state forming theory, the Monarch. Hobbes saw that people were so busy being unpleasant and fighting each other that they finally agreed to create a Monarch with the power to stop them fighting and so improve the common lot. Two important criteria for him, Monnet would have applauded, firstly that any agreement between states had to have some force available to enforce it;<sup>458</sup> this was one of the problems with the League of Nations in Monnet's eyes,<sup>459</sup> secondly he stresses that it is the essential lack of trust between individuals which means that they must all agree to give up their rights to self defence together, and grant these to the sovereign power.<sup>460</sup> His single centralised Monarch/sovereign power was to be absolute and no doubt, given the desperate state of things as he perceived them, a desperate measure was needed. The Member States and their publics wanted to have an end to war and were prepared to see the creation of a Monarch of sorts to control them, but evidently their desperation was not as great as some would have it, maybe since NATO was in the offing. If all the MSs allowed their hands to be tied in the regard of war then all would be better off. Thus a weak Monarch, to use traditional parlance, was created to keep war at bay. Unsurprisingly the regional powers were suspicious of the Monarch they had allowed to be created and sought to keep it in check.<sup>461</sup>

Whilst on the subject of political philosophy and the Community project Hegel has to be mentioned. The Monnet goal was to put an end to the Nation-State international anarchy that allowed these entities to operate in a legal vacuum more or less as they wished. If Nation States

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<sup>456</sup> See note 173 Shore, (2000) p.219 'Much more than simply an abstract theory of 'cognitive change' engrenage clearly does work as a key mechanism in the creation of a new type of 'European' subjectivity. This process also appears to be happening in the Council of Ministers... particularly among the seconded national civil servants working in its various permanent and specialised working groups.'

<sup>457</sup> Stuurman Siep, *Staatsvorming en politieke theorie. Drie essays over Europa*, (1995) Amsterdam, Bert Bakker.

<sup>458</sup> Hobbes, T. *The Leviathan*, Chapter 17. 'Covenants, without the sword, are but words, and of no strength to secure a man at all'

<sup>459</sup> Bromberger, 'Jean Monnet' quoted see note 415 Fransen (2001) p.30-31 '...in Geneva I was impressed with the power of a nation that can say no to an international body that has no supranational power. Goodwill between men, between nations, is not enough. One must also have international laws and institutions. Except for certain practical but limited activities in which I participated, the League of Nations was a disappointment.'

<sup>460</sup> Hobbes, *The Leviathan*, Chapter 17. 'I authorize and give up my right of governing myself, to this man, or to this assembly of men, on this condition, that thou give up thy right to him, and authorize all his actions in like manner...'

<sup>461</sup> See note 110 Kassim; Menon, (2004) p.102

could be bound into a legal framework of which they were themselves a part and to thus make them subject to legal restrictions and finally penalties then warfare and activities leading to warfare would be minimalized if not entirely removed. The cost would be in terms of the Nation States' freedom, a basic fact that Tacitus had noted centuries before, that liberty was the cost that had to be paid in order for there to be peace.<sup>462</sup> Hegel considered the state to be a means of making people do what they knew to be correct but were not motivated to do without its intervention. In itself not a new idea as biblically Kings had enjoyed this status for a long time; they were there to keep society Godly and to make people behave morally via coercion. But raising the state to this level was new and the dialectic that helped provide an explanatory framework for this situation was also. Monnet's raising up of a supranational authority to act in a state like manner to coerce, guide and finally to bind MSs into a legal system which would end the legal vacuum fits into Hegelian philosophy quite neatly. If Hegel's state can be said to have made people into more conscientious individuals than they would be naturally, then the same can be said of Monnet's Method and the Nation States concerned.

The often suspicious and negative behaviour of the MSs towards the supranational ambitions of the EU reflects antagonism and competition and not cooperation:

'The history of the Community's development, however, and specifically the evolution of the Commission's position, attests to the fact that the Community has often been seen by Member State governments as a zero-sum game, in which the Commission's authority challenges their own . . .'<sup>463 464</sup>

To explain this suspicion, a glance away from the continent is needed as what happened is reminiscent of two Anglo Saxon political events which some have seen as clearly related and certainly they were if only from an idealistic way. The Magna Carta and the US Declaration of Independence are the events in question and no doubt have a lot of mythical content swilling around in them but they do both show regional authorities (feudal knights and the states) dealing with their respective central body in a manner which might seem to border on the hostile. Certainly they reflect the suspicions of strongly independent regional governmental organs towards a central government which is maybe necessary but also as dangerous to them as maybe the enemies beyond the borders. It's these qualities of caution combined with an awareness of strength and yet also a willingness to accept an unfortunate evil so long as it is hedged in with limitations which is special. Both tried to build into the 'contract' with their central governments, institutional safeguards which would allow armed resistance if necessary. The Magna Carta has the central power authorising rebellion against itself with the committee of twenty five barons who are allowed and instructed by the Monarch to ' . . . distrain and distress us in everyway they can . . .'<sup>465</sup> as the 'security clause' states.

Both the US and Medieval England had just had rather unpleasant experiences with central authorities which they had recently defeated and which affected their whole approach to the idea of central government. Europe had, prior to the Second World War, been more inclined to adore absolutism in one form or another. Hitler had changed all that with several states simply becoming regional entities with little authority. With the arrival of the Americans West Germany also found itself in the curious position of being a regional power once again.

<sup>462</sup> Tacitus. *Histories I*.

<sup>463</sup> See note 168 Drake (2000) p.247

<sup>464</sup> See note 195 Dinan; Nugent (2000) p.263 He emphasises that the Commission has at times pushed for an; 'Excessively maximalist position' which 'dangerously insensitive' and created a political and popular backlash against 'supranational policies and institutions.' Always some backlash can be expected, a reaction to supranationality with it is argued often enough peoples and politicians acting together, the latter no doubt responding to the DP force in the former.

<sup>465</sup> Magna Carta para 61



The negative central power was gone, violently defeated and removed and sovereignty was back on the cards. Only the European Nation States had had a sharp reminder of being dominated by a power beyond their borders reducing them to weak regionalism, and this they would resist. Thus Europe found itself at a Magna Carta moment or elements of a Madisonian one and they behaved accordingly. The uses of a central authority were clear if only to resist a return to regionalism as US or USSR satellites. The latter version, with its ideological and totalitarian qualities no doubt bringing back memories of more recent domination by Germany.

Often there appear to be and to have been two diametrically opposed forces at work in the EU and its evolution.<sup>466</sup> This certainly does not fit into the classic state formation theories and is more at home in a Hegelian dialectic structure. On the one side there was Monnet and the Supranationalists with their concept of a federal Europe and on the other the MSs with their political power but also their economic and military impotence and fears. The former pressing for a single functionalist technocratic organisation which would expand and become the future government of a federal Europe; the latter hemming it in on every side with organisations dominated by the democratically elected MS governments. This positioning of clear alternative visions and methods of government and the fact that the supranationalists were pretty much an interest group with a concept and some political connections but no real power and the MS governments in the absolute opposite situation underlines the differences between this situation and classical state formation theory where it is the governmental forces of states which are the key players in the development of their own state.

In summary, war and occupation provided ideal conditions for state formation to take place combined with potential changes in trade and the existence of NATO and Western Europe's new position as a Western appendage to the US dominated west. Monnet's deliberate creation of a weak central power (Monarchy) able to prevent war, was similar to state formation strategy as was the external border. The deliberate fragmentation of MSs discussed earlier implicit in functionalism was another step but more importantly from a positive perspective the co-opting of politicians and bureaucrats into the new system was vital and a typical step in state formation. Reactionary forces were also inevitably present as the de Gaulle incident showed but over time were overcome. But the EU is not yet a state as such, the Nation States proved to be more resilient than had been expected, but it is heading in that direction. The speed with which it has occurred leads some to call it a young organisation, and bearing in mind the centuries it took to develop France and its absolutist Monarchy, the few years that were required to get the basics into place were remarkable. There are enough state formation features about the EU to suggest that some elements of it have taken place. Since the standard historic examples fail to grasp the dynamic in its essentials another has to be sought for. Given the recent memories of the 1950s leaders it is rather amazing that any central authority at all was agreed to, however weak. To account for this, more venerable history must be dusted off and outlined. All these humiliated and suspicious Nation States had also known more benevolent forms of central authority. Indeed the German States are said to have been against the nationalism of their new nation in the past owing to their 'old allegiance to the Vatican's supra national authority.'<sup>467</sup>

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<sup>466</sup> See note 168 Drake (2000) p. 247

<sup>467</sup> Economist 25.02.06 page 79 Book review section

### 1.3 AN ORGANIC EU-PAPACY MODEL

Having considered the reader's possible objection we can take the argument one stage further and beyond the reach of standard state formation theory. Since this theory only covers certain aspects of EU integration any historic example to cover more elements is hard to come by. However all is not lost, a look back into a more distant period of time offers a pretty useful example of something similar going on. If standard state formation belongs to the more modern period of history we need to look at that preceding it, namely, the medieval ages. One example which fits several of the more important requirements for comparability is that of the medieval Papal Monarchy which emerged in 1050 and lasted for the next few hundred years. Here two forces were at work the papacy and the monarchies, in particular the Germanic Holy Roman Empire. These can be, with a bit of care and elaboration, compared with those involved in the evolution of the EU. Before that it has to be stated that any such comparison is going to be broad and details will differ as the historic periods are far apart.

A large range of similarities between the EU and medieval papacy exist: 'EU: Papacy Reincarnated?' explores the surprising parallels between the medieval papacy and the European integration project which has resulted in the EU.<sup>468</sup> The book starts from the premise that there are few truly new ideas and concepts let alone organisational structures in the world. There have been a vast range of attempts at uniting Europe but only two can be said to have had long term success. The medieval papacy and the EU were startlingly effective in their historical periods and served very similar roles in a high on identical geographical area. The European Community project has many idealistic if not openly spiritual overtones with Catholic Social Teaching integrated into the founding treaties and every treaty that has followed. Both European projects had curiously comparable economic, political and spiritual goals. Generally speaking the medieval church provided the domestic governmental administrative services that the monarchs increasingly relied on and the Papal layer provided the 'European' dimension that had been so lacking. The Roman Church and Christendom were both political and social and a neat secular - clerical split such as exists today was unforeseeable then. The medieval papacy and the Roman Church it ruled was one of the most economically active and powerful medieval institutions; bishops and clerics ran much of the economy of Christendom and controlled much of its wealth into the bargain.

Systematic comparison shows that the Vatican institutions and their structure are not very different to those established in the Late Medieval period. These institutions and their structures are very similar to those of the European integration project, thus the EU institutions bear many similarities to those of the medieval papacy. The Community institutions share in a rather confused manner legislative, executive and judicial competences just as happened in the medieval papacy; nation states have always sought to keep the competences separate. This results in a system where the European Parliament, Council, Commission and European Court of Justice act in a similar manner to their medieval equivalents the Councils of the Church, the Pope, the Cardinals and their staff and the constantly present in Rome ambassadors of the rulers.

European law and Romano-canonical law are shown to have shared the quality of regulating economic activity with a strongly social tinge. Both were very involved in ordering economic, social, institutional matters and ensured the success of their respective European projects and were actively promoted by the papacy and the Community institutions. They served/serve the function of being international alternatives to national limited law and legal systems-often if

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<sup>468</sup> Stout, M. *EU: Papacy Reincarnated?* Metajuridica Books (2005)



individuals or merchants from different states were/are involved. At a very early stage both organisations used identical logic and methods (even the wording is almost the same) to claim supremacy and direct effect for their law and legal system over that of the states/kingdoms they desired to mould and organise. Both types of law were promulgated using similar instruments: Community regulations, directives and decisions. These have direct predecessors in the medieval papacy. Both the European and the Romano-canonical legal systems expanded rapidly to fill the new European niche and used the 'national' legal personnel to achieve this. Both sought to extend rights of to the common man and to rendered MSs or in the medieval times, monarchs, liable to legal rulings and punishment. The casting of an 'immoral' king from Christendom was possible then and a MS government can be suspended from the EU as happened recently to Austria when a right wing party gained some role in that country's government. Then as now, the 'supranational' authorities found themselves largely without an army or police force as these were and are functions which the member states/ rulers jealously guarded and guard.

De Gaulle clashed in the nineteen sixties with the European Commission in a dramatic dispute essentially over the distribution of power between the supranational organisation and a Member State. Around 900 years earlier Pope Gregory VII clashed with the German King Henry IV at Canossa over the same issues, the rights and powers of the new supranational Reform Papacy created a couple of decades before vis-à-vis the kingdoms and their rulers. The Reform Papacy had overtly political goals as had/has the Commission. Vast bodies of literature were generated by the academics of the respective periods to explain the curious political reality that now existed, a strange and very unusual and original governmental system with powers divided between a new supranational governmental force and the traditional member states or rulers. Nowadays the discussions are between intergovernmentalists and neo-functionalists; then it was between supporters of the Monarchical theory of government or those in favour of Papal Monarchy-in essence the arguments and positions are the same.

The first fifty years of the Reform Papacy and the European integration project reveal many parallels from the creation of a new currency to the 'moral' duty to enlarge eastwards. Recently it was to rescue in a sense the other half of Europe from the USSR or Russia as it now is. Then it was the moral duty to rescue the eastern Christian Empire from the clutches of the Islamic forces and to so in a sense re-unite the old Roman Empire again was similar to the motivations of the EU. Indeed many of the initial stages in the developments of the EU and the medieval papacy are comparable. Application of some of the theories involved in explaining European integration to the Reform Papacy period prove, to a large extent, that the two European supranational organisations served very similar purposes, used matching methods and in general approximated to each other.<sup>469</sup> Coincidence is a possible explanation but it is far more likely that the EU is directly descended from the medieval papacy and has fitted neatly into the European governmental niche created by the latter.

A short digression is needed here. The reader may wonder what such a backward period like the medieval one can possibly have to do with the modern EU and the twentieth century. The great writer Dryden pondered the same question in Preface to Fables, Ancients and Modern and reached the following conclusion

'For mankind is ever the same and nothing is lost out of nature, though everything is altered.' However, the reader might still say, surely, the medieval period was one of extreme primitive backwardness combined with extraordinarily parochial tendencies, with individuals living in small villages and with even more limited loyalties than they have today. To answer such

<sup>469</sup> Stout, M. *EU: Papacy Reincarnated?* Metajuridica Books (2005)

points it is always handy to have an eminent source to refer to; with this in mind the classic work on the period; 'The Papal Monarchy' will be quoted from to give the reader a truer sense of what was afoot in this period

'This pattern of care, control, and repression was an international one, and this too was a new development of our period. True, if we could visit medieval Europe we would be struck by its intense localisms. Major churches had their own liturgical customs, cities championed their own saints or protected their own heretics from among their favourite sons, and noble ran courts of warfare, love and piety in whatever combination they thought fit. Yet the elements of growing internationalism were powerful. The most dramatic of all was perhaps the vast struggle of western Christendom to extend its boundaries through the crusading endeavour. There were international religious orders: Cistercians required the same daily routine to be applied from the Scottish borders to the mountains of Calabria, and the friars expected their members to be available for transfer between houses and if necessary between countries and continents. Paris and Bologna were truly international universities. At the heart of this process stood the Roman Church itself, which during these years completed the process of development from the local church of Rome to a Curia which recruited personnel from many parts of the west to run an international organisation, which had largely lost its local connections in Rome and which for long periods was unable to enter the city at all.'<sup>470</sup>

Earlier we noted that there seem to have been two opposed forces working partially against each other which resulted in the EU of today; the supranational forces and Monnet Method and DP and the MSs. These forces could not be absorbed into each other or rather taken over by the other as they were too dissimilar. Each had a degree of sovereignty within a given sphere and related expertise; they were at one and the same time opposed to and dependent upon each other. To function effectively both had to retain some degree of independence formal and informal. The MSs need the Commission, the supranational force, to remain independent to provide desirable integration and the Commission requires the MSs and Council to provide the implementation skills and political mastery of the European demos that it lacks. Both supranational and Papal forces longed and long for greater control and power over the secular-monarchs or MS authorities, if for no other reason than to further their idealist projects. Both the MSs and the secular monarchs of the medieval period are and were drawn to the dream, however misunderstood, of a prosperous European Unity such as is and was perceived to have existed under the Roman Empire. However, any form of unity involving large losses of sovereignty were and are vigorously resisted. It is interesting to note the touchy suspicion with which the medieval French and English monarchs regarded Holy Roman Empire's imperial claims to jurisdiction over the whole of the old Roman Empire;<sup>471</sup> which at times the Popes seemed to approve of. The leaders of the various European Countries have always wanted to maintain their power over their territories and if possible to forcibly extend it over those of others, and yet they desire unity and prosperity. Of course, their ideal goal is and was that of a Roman Empire under French, German, Spanish hegemony. But this goal has never achieved lasting success although certain military figures like Hitler and Napoleon got closer to it than most but also for a briefer period. Any unity would have to be won by a different force to that of military or political power emanating from any one region.

The solution came under the Reform Papacy and in the 1950s from cohesive, well educated social groups then the clergy and in the fifties the technocrats. Both of these had in general the ambition and ability to re-structure their societies. In the European/Christendom context both were motivated by desires to re-forge European Unity, reduce or remove war, and to apply

<sup>470</sup> Morris, C. *Papal Monarchy* (1991) Oxford, Clarendon Press p.581

<sup>471</sup> Tuchman, B. *A Distant Mirror the Calamitous 14<sup>th</sup> Century* (1978). New York, Ballantine Books. p.308



expertise to ruling. Both recognised that Aristocratic-monarchical or in modern times MS self interest rendered sensible government impossible. By the standards of their day rationality was related to purity from secular or MS interference. The clergy were deliberately separated from their loyalty to secular powers regional and monarchical and so from dynastic problems as a whole which plagued the medieval period. They were encouraged into redirecting their loyalty to the Pope and to Rome, which offered them increasing possibilities for influence and power by protecting them from the secular powers and opening up a range of new tasks for them to effect. Many were encouraged to visit Rome and to become more directly involved in Papal government.<sup>472</sup> Technocrats were encouraged to work in Brussels and to become caught in the gears and to shift their loyalty from the MSs. One of the big issues that the Reform Papacy opposed was simony or the purchase of clerical office by secular regional authorities. Monnet had similar views, albeit in a modern form, about MS governments and loyalty to them making European objectivity in officials impossible. Both clerics and an expanding corps of European officials had to be guaranteed independence from regional authorities in the name of the international objective mission. Technocrats were, like the clergy, deemed to know what was best for society and how to achieve it. MSs, like monarchs were to be downgraded and treated as under the law in order to remove the international anarchy which was in the eleventh and twentieth centuries. Then as now the demos, the people however defined, were initially not the target of the integrationist forces but rather the clergy or bureaucrats. DP in the medieval period has to be defined as the empowered national governmental systems with their interested parties: nobility, monarchs, who were expected according to the political theory of their day to protect the church and clergy, and above all clergy who represented the citizens of Christendom, the Christians; ' . . . the ministers of the church at every level are the representatives of the communities for which they speak and act.'<sup>473</sup> The 'people' were then considered to be the groups mentioned.<sup>474</sup>

Both supranational organisations were desirable to the regional governments of their day and offered oddly similar immunisation from similarly undesirable things combined with the possibility of wealth creation via: economic innovation, governmental improvements and the employment of more officials and social political stability. They were both reform movements, holding out creative, fresh approaches to old problems. It seems they managed to avoid, at first at least, direct opposition from political or administrative authorities which would have quickly snuffed out their respective integration attempts. European unity was not to be had by domination or hegemony, which simply provoked overwhelming opposition which could not be broken down. Instead unity was made to seem pretty innocuous and even beneficial. The limited bureaucratic integration of the ECSC and the integration of the clergy under the Reform Papacy seemed to serve good governmental purposes for the MSs and monarchs. They wanted the Popes or the Higher Authority to rein in the national cartels of coal and steel barons or in the case of the Reform Papacy the regionally controlled clergy apparatus. The rulers had effectively lost control over these already in any case.<sup>475</sup> The prospect of Church purity and unity and also peace were positive goods for monarchs and they were willing to tolerate a more centralised and powerful papacy if that was the price to pay. If the Popes wanted to do the dirty work of reining in the rulers' opponents and then be blamed for it so much the better; much the same logic as MSs seemed to hold with the supranational governmental layer.

The determined opposition the rulers finally faced in their respective supranational organizations was so unexpected and radically unusual that it quite took the governmental forces of

<sup>472</sup> See note 470 Morris (2001) p. 113

<sup>473</sup> Southern R. W. *Western Society and the Church in The Middle Ages*, (1985) Harmondsworth, Penguin Books Ltd p. 151

<sup>474</sup> *ibid* p. 51

<sup>475</sup> See note 470 Morris (2001) p. 96

the day by surprise and left them very wrong footed. The Popes and supranationalists were not a domestic class or traditional group within the countries with familiar competing demands for power. That the MSs and the monarchs could have dealt with, rather the 'supranational force' they confronted was pretty much intangible more an ideal and ideology than a force at first; which sought to take over their administrations by supplanting their loyalty to their ruler with loyalty to a higher authority. For the rulers then and in the nineteen-fifties, they were out of their depth playing a game where others had set new rules to play by. The new rule makers were located externally to the major countries of the day and so had that most poignant of power positions; they were able to act domestically within these countries whilst remaining outside the direct control of the rulers. Unfortunately for the rulers concerned their usually openly obedient clergy and bureaucrats found the new regime quite tempting to collaborate with, since it valued their skills highly and combined idealism and expertise which they found most palatable.

The inexplicable willingness of rulers of every age to have their hands tied and, of course, to be seen to be having their hands tied is worth discussing. Rulers are of course most willing to have their hands tied when it also results in their opponents being as, if not more, handicapped than they are. The desire of the Reform Papacy to ensure that direct secular involvement in the selection of clergy was accepted by monarchs in principle because it seemed to be related to secular aristocratic appointments to clerical positions. Thus the monarchs' regional aristocratic opponents were most affected.<sup>476</sup> When the Pope's demands were directed at the monarchs themselves and vital powerful interest groups they depended on, namely the higher bishops close to the rulers who had bought their offices, then there was more of a struggle, what they had accepted in theory was less pleasant when applied to themselves. The MSs agreed to the ECSC and the common market, since it tied their hands but also since it weakened domestic forces, 'As Millward argues, given substantial domestic opposition, "The government might be able to use the new supranational authority to enforce a restructuring policy on the industry and do so in the name of Europe."' <sup>477</sup> When confronted in the Gend and Loos case with the results of what they seemed to have sort of agreed to, they opposed it but were overruled. It was vital for peace that all MSs had their hands tied as they were and the same was true in the medieval period. In a sense all the monarchs<sup>478</sup> in Christendom found themselves equally under the heel of the resurgent Reform Papacy claiming more rights to decide when wars were to be fought and providing or depriving the monarchs of the means to fight the wars by use of the availability of clerical taxation for monarchical purposes.<sup>479</sup>

Both the supranational organisations approached the political field of their day with multiple strategies and highly flexible, evolving organisations capable of several seemingly contradic-

<sup>476</sup> See note 470 Morris (2001) p.96

<sup>477</sup> See note 326 Smith, (2000) p.174

<sup>478</sup> Ullmann, W. *The origins of the Great Schism: a study in fourteenth-century ecclesiastical history* (1972) Hamden, CO Archon Books p.325

<sup>479</sup> Examining the notion in the last paragraph of rulers having their hands tied in greater depth it is interesting to note that this is not as aberrational as it might seem. Rational choice theory explains the current civil service structures in some Anglo-Saxon Countries and apparent protection of their neutrality as being an example of respective legislatures preferring to have less patronage powers over civil service appointments in favour of increasing the likely longevity of their legislation. In practice, this means that each government is aware that it faces two main erosions to the legislation it generates, the first is the advent of a new government which could abolish or dilute important elements of the previous legislative period, and the second is the loss of legislative content to ministries as the latter are granted wider discretionary margins for interpretation. Legislation is considered to be a good which rulers must grant their main supporters and do their best to guarantee against future encroaching. Thus the neutral civil service is a lesser of two evils and a tying of hands which legislators were willing to accept as a fairer and better method of doing business. The Commission, with the formal neutrality which it is supposed to harbour and often shows, provides a vital good which MSs require for similar reasons to the neutral civil service argument. They normally need the Commission to be neutral and objective to prevent their MS opponents foisting their national goals on them. The Commission thus allowed them to achieve desired collective objectives. It has been said that there are truly common policies where MSs trust each other least and that the Commission has traditionally had maximum neutrality in the same areas.



tory functions. The Papal Curia and the Cardinals were initially church based and dealt with church matters and not 'secular'; they literally served the pastoral needs of the Roman churches and congregations.<sup>480</sup> And yet they were capable of being turned remarkably quickly into an imperial senate, with a form of regional representation of the whole of Christendom. The selection of the Cardinals and the changing Curial structure seem to indicate that the Popes were well aware of the possibility and desirability of them serving another function.<sup>481</sup>

At the same time the Curia became gradually more bureaucratic maybe to counter balance for the increase in secular influence. The new Curia seems to have been modelled on the Imperial model, with less emphasis on a senate to run Christendom and more on the need to administer the newly won competences.<sup>482</sup> The High Authority was first of all a small group of dedicated experts isolated from external influences. As it faced the growing complexities of detailed mundane administration as opposed to grand sweeps of strategy so the emphasis went towards bureaucracy rather than policy making and the organisation came to look similar, in part, to MS bureaucracies. Set backs and direct opposition by the Empire and for the European federalists that of the failed EDC and or the Luxembourg crisis ended the initial attempt at state formation and forced the organisations to adopt less dangerous organisational forms.

The Commission like the Cardinals contained the dangerous but useful force for compromise and decision reaching and making, of individuals often representing and or from different regions and representing different countries, whilst being formally independent from these regions and loyal to a supranational organisation.<sup>483</sup> As with Commissioners, sometimes Cardinals were more loyal to the church and sometimes to countries-regions. Thus both Curia and High Authority-Commission were capable of being superior governmental forms (universal Monarchy or federal government executive in waiting) and or less dangerous bureaucracies with strong regional tendencies or something in between. The problem was of course that it was hard for the organisations to run mundane governmental matters and carry out grand political schemes at the same time,<sup>484485</sup> something which David Coombes stated was the problem of the Commission.<sup>486</sup> The ambiguity of function, structure, ambition and information maximization can be argued to be a great strength as the resultant organisation is unpredictable and less easy to contain or absorb. It has, in a very real sense, the right of initiative and plenty of possible avenues to execute this right.

The Curia is said to be an organization which is pretty unique as it never seems to have been planned but rather evolved, thus it did not reform or change whatever the pressures to do so.<sup>487</sup> Rather than reforming itself, it added on more bits to other obsolete elements. This seems to be reflected in the Commission

'The Commission has never gone through a major reorganisation. Instead, obsolescent systems have been stretched beyond their reliable range of operation and structures have been added without adapting the organization as a whole.'<sup>488489</sup>

<sup>480</sup> See note 478 Ullmann, (1972) p.319

<sup>481</sup> *ibid* p.320-321

<sup>482</sup> *ibid* p.329-330

<sup>483</sup> *ibid* p.320

<sup>484</sup> See note 474 Southern (1985) p. 132. 'They aspired less and less to provide the leadership which always seemed just beyond their grasp, and increasingly they devoted their energies to keeping the wheels of government turning.

<sup>485</sup> See note 470 Morris (2001) p.180

<sup>486</sup> Coombes mentioned see note 30 Edwards; Spence (1997) p.5

<sup>487</sup> Coppens E. Review on 'EU Papacy Reincarnated?' THEMIS 2006-1 referring to W.F.Akveld, *De Romeinse Curie. De geschiedenis van het bestuur van de wereldkerk*, Nijmegen 1997.

<sup>488</sup> See note 41 Matcalfe (2000) p.826

<sup>489</sup> See note 1 Peterson; Bomberg (1999) , p.20. 'Reforms designed to rationalise decision making or make it simpler and more transparent are difficult to agree unanimously. Path dependency leads to an "organic accretion" of decision making

This situation is explicable from the perspective of organizations holding a degree of sovereignty, which perceive of themselves as under constant challenge in which internal actors have to be placated. Thus both were full of vested interests which could ensure resistance to reforms and divide the organization internally. Only a stick and branch reform with the whole of Christendom being reformed as well could have ensured the longevity of the Papal medieval system of government, the same applies to the EU as we will see.

A brief development of the theme of mundane governmental tasks vis-à-vis grand political leadership in the Commission and papacy would be illuminating at this stage for the purposes of comparison. The growth in the performance of comitology and management tasks in the Commission reflects the unwillingness of the Commission to pass over the opportunity to have governmental powers. But the Commission has neither the resources nor the expertise to adequately perform the required functions. Its supranational credentials and essence are pretty irrelevant in these tasks. It is an interesting aside that Monnet wanted the supranational institutions to own their own territory and to be sovereign in it, much like the Vatican. The Papal obsession with the Papal States began as a traditional search for security and status in a world where these were directly linked to feudal rights over land. However different and grand the Papal project had seemed with its vocal idealist principles and claims for political supremacy on the basis of these, deep down there was always a hunger and need for secular political power and thus security. The Popes tried to have their cake and eat it; claimed universal power at the same time as desiring political supremacy in Italy. In its most banal form this led to Popes who '... called in the universal power of the Pope to support his Italian policies ...'<sup>490</sup> A problem was that the papacy was not a very good ruler of the Papal States, it was after all not a secular monarch. But perhaps it too had a vaccine mission which forced it to strive for a new governmental structure; for a more real Papal Monarchy, or possibly a new Roman Empire of sorts, with an Emperor in a subordinate role to the Pope.

Regarding the functioning and underlying assumptions and principles of both integratory projects; many would see in them both something problematic and 'pathological.'<sup>491</sup> With regard to Pope Gregory VII's dealings with German bishops his actions and plans '... appeared to the German bishops as the subversion of traditional order.'<sup>492</sup> To state that the medieval Papacy, surely a spiritual religious power if ever there was one, would consider itself to be a political power with the right to demote, crush and rule the monarchs and in particular the God appointed Emperor would have been branded as 'pathological' by clergy and rulers alike prior to the Reform Papacy. It was turning the order of things on its head; the Emperor called the Church Councils and his word decided theological issues. Efficiency was gained by mixing secular and spiritual arms and not keeping them separate. The Emperor protected the church and appointed Popes and bishops alike, the church and clergy served the Emperor and secular powers and this was all biblically stated. It was the right way to do things; it was healthy, correct and effective. Without the Emperor, the Popes and church were weak and powerless at the whim of the Roman nobility and other regional nobles. The rulers provided protection and the church administered the state such as there was. Ruling and government were to do with the ability to decide and power to act, often with military power, internally and externally. The monarchs with powerful nobles did this harshly and effectively. In primitive times the sword was more powerful and important than the pen. And yet within a genera-

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procedures: new ones are fastened onto old ones in the same way that lichens adding layer upon layer, overlapping but never shedding. In the EU, the result is enormous procedural differentiation, with the number of different, formal decision making procedures increasing steadily...

<sup>490</sup> See note 473 Southern (1985) p. 150

<sup>491</sup> See note 470 Morris (2001) p. 115

<sup>492</sup> *ibid* p. 114



tion of the great Emperor Henry III who had selected a range of Popes and restored them to some degree of purity, Pope Gregory VII had declared himself the political superior, theoretically at least, of the Emperor and all monarchs and delegated them to the position of obeying his and the church's instructions. The separation of clergy from the secular was to take place, effectively depriving the latter of any say in the church and theoretically denigrating them to obedient servants and executioners. Priests and Cardinals were raised from more spiritual concerns to becoming the Pope's senate and representing the nations of Christendom to some extent. The pen and not the sword would rule, in fact the sword would do just exactly what the pen decided it should, it was after all there to serve the experts. It should be stressed that much of the above is about changes in degree as the church was involved in governmental matters, but under the Reform Papacy this increased for some cleric ranks.

The supranational tendencies of Monnet and those that followed him went in a similar direction. To an extent politicians and MSs should be made to serve the technocratic experts who, on account of their education and training, were more impartial, objective and able to rule in a post national-political age. From now on rationality, the functionalist dream, would decide policies and not primitive national and political self interests. Politicians and MSs could exist but they should be increasingly subordinated to the 'High Authority.' The sword or rather the resources to make it were too dangerous to be left to national politicians. Interestingly enough both projects initially at least remedied problematic democracy with even less. The secular influenced voting procedures for bishops in cathedral chapters were finally replaced by Papal appointments<sup>493</sup> and the democratic election of governments and ministers to decide on Coal and Steel nationally were replaced by the unelected High Authority.

The position of the Emperor was interesting. The radical political programme of Pope Gregory VII saw him gathering Imperial symbols of authority to himself. This was unsurprisingly openly resisted by the Emperor, as was briefly mentioned earlier, who had previously accepted the Pope more or less but who was unwilling to see his political position downgraded however willing he might have been to have his domestic opposition tamed and his clergy spiritually integrated into a revived Papal Christendom. The de Gaulle clash with Hallstein was likewise fought over symbols of state and pretensions to state power which were undesirable for France and the French leader just as the Popes were for the Emperor and Empire. Integration was wanted and its benefits but a competing, seemingly aggressively presumptuous 'political' Pope or Commission President (from the Imperial or French point of view) was not, particularly since this new political ruler was subverting their own domestic, political administrative resources.<sup>494</sup> The demands of the Pope widened to order that several of the Emperor's most powerful advisors, clerics who had purchased their offices, should be removed from office, effectively weakening him domestically. The Emperor then resisted and added the Imperial office to the opposition against the Pope which consisted of many German bishops. At times the Emperor successfully contained Pope Gregory VII and, in particular, raised up a counter Pope. Many Cardinals adopted or openly expressed Imperial leanings. The counter Pope agreed with much of the message of the Reform papacy but acknowledged the right of the Emperor to rule as before over the church. Many of the other monarchs supported the counter Pope and strengthened their national churches and their leaders. The Emperor played the trump card and called for a Church Council to decide which Pope should rule and in the absence of Pope Gregory VII declared the counter Pope to have the right to rule.<sup>495</sup>

<sup>493</sup> See note 478 Ullmann, (1972) p. 453

<sup>494</sup> See note 18 Wallace (1990) p.30 and p.62. 'De Gaulle as a political leader... had little difficulty in exposing the weakness of the assumption that national governments would not resist the erosion of their sovereignty by technocratic elites, working to detach the loyalty of their citizens.'

<sup>495</sup> See note 470 Morris (2001) p. 115

If the process of the institution building of the EU and medieval Papacy and Christendom are looked at in more depth then both differ similarly from classic state formation and both show institutions being reactively formed or given new meaning; with medieval versions emerging similar to the EP and European Council. As the Reform Papacy or supranational programme became better known and dogmatic and began to be enforced so, progressively, the effective governmental forces of the day reacted against them. Broadly speaking for the Reform Papacy this process started with the German archbishops; 'The first stage was one of conflict with the archbishops.'<sup>496</sup> These in both England and the Empire moderated the decrees of the Pope and essentially refused them.<sup>497</sup> The bishops were by this point also drawn fully into the dispute and were summoned to Rome. Some were then punished by the Pope via excommunication when they failed to obey. The next step was for some of the German bishops to draw the Emperor into the fray and to invoke an imperial synod and for the Emperor to depose the Pope. Part of the method of dealing with and containing the Reform Papacy was by accepting the broad demand for purity in the church and a stronger Papacy but separating this from the strident demands for political power and right to depose rulers that Pope Gregory VII favoured to achieve the same end. The imperial bishops raised the argument that the new Pope, Pope Gregory VII, had been wrongly elected and that he had no right to make decisions over them. The Imperial and Monarchical body politic was stage by stage resisting and attempting to contain the Reform Papacy. But this too was at work; effectively the Pope fragmented the loyalty of the bishops and the clergy and barons in general.<sup>498</sup> Bishops were required to serve the Pope first and foremost and yet they still owed allegiance to the Emperor, at times two individuals were appointed to clerical positions by the traditional authorities or those of new Papacy. Barons were likewise reminded that they were barons of the Empire but also members of the new Christian society and 'state' which was forming of which their ruler was but a servant. Some of the bishops and the regional powers saw opportunities in the Papal measures or were moved by the idealism and swapped sides. But in Rome there were plenty of Cardinals and other clergy who were equally split in their views and finally drawn into the struggle and abandoned the Pope,<sup>499</sup> who had arguably abandoned many of them for his close confidantes who he felt he could trust or at least who did not resist him.<sup>500</sup>

The progress of Papal governmental construction was unusual; the reform Popes advanced at synods their programme for Papal state formation. These were countered by Imperial synods<sup>501</sup> which advanced the Imperial thesis of the Emperor heading the church with the Pope serving under him. This was obviously opposed by the papacy which excommunicated the Emperor and tried to fragment his administration and baronial support. The Emperor, supported by other monarchs and many of the episcopacy<sup>502</sup> then matches papacy with papacy, propaganda with propaganda, excommunication with excommunication. Later monarchs raised Curiae up against Curiae whilst strengthening their hold over their national churches and appointments to them. This remained a method of secular - Papal interaction throughout the period with Popes and Curiae raised against resident Popes and Curiae. Neither side finally totally won, it proceeded with crisis, duplication, compromise and then a gradual preparation for the next crisis. The existence of two competing forms of 'European' government each claiming some sovereignty and the necessary arms of government ready to supersede their opponent is not overly dissimilar to the EU situation laid out earlier.

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<sup>496</sup> See note 470 Morris (2001) p.113

<sup>497</sup> *ibid* p.114

<sup>498</sup> *ibid* p.121,115, 131

<sup>499</sup> *ibid* p.120

<sup>500</sup> *ibid* p.111

<sup>501</sup> *ibid* p.115, 118

<sup>502</sup> *ibid* p.118



The end result of the stalemate between Pope Gregory VII and the Emperor was that several important elements of medieval government and that of the papacy were decided by the conflict. The first was that the College of Cardinals, many of whom came to represent the political forces of the day, was strengthened and its electoral rights extended. After the first shot at Papal imperial power under Pope Gregory VII, and what one might call a form of instant state formation, had failed then the Cardinals became more inclusive and increasingly allowed to represent the regional political forces in Christendom particularly via them constitutionally replacing the papal synods (church assemblies). These the autocratic Pope Gregory VII had called and selected the attendees. The Cardinals were then named the consistory, the cabinet of the Pope and they also gained the right to sign Papal declarations the absence of their signatures made, some state, the declaration invalid.<sup>503</sup> They were now the senators of the new Papal 'empire' and represented a wide range of opinion. Many of the Cardinals had switched sides or maybe revealed their true Imperial leanings during the Schism (the creation of a counter pope) following Pope Gregory VII.<sup>504</sup> The strength of their position was acknowledged by Pope Urban II when he allowed them to remain in office and even confirmed the privileges that the imperially oriented counter Pope had granted them. Thus whilst formally Pope Urban II remained rigidly in support of the ideological stance of the Reform Papacy, it can be argued that he adopted many of the characteristics of the Imperially dominated counter-Papacy, even in terms of turning a blind eye to simony. That many Gregorians (supporters of Pope Gregory VII and the radical reform Papal movement and related political claims) felt shocked by the compromises made by Pope Urban II<sup>505</sup> and Pope Paschal II who followed him showed the extent to which the compromises had gone.

With exceptions, the Popes gradually left the monarchs alone within their traditional areas of government and encouraged them to become directly involved in the Papally summoned Church Councils. The apparent dramatic right of the Pope to control the administration of the Empire was severely moderated by the agreement reached at Worms which saw many economic sectors which bishops had operated for the state separated from their position as bishop under the Pope. For these areas they served the Emperor. One might argue that the separation of state and church began here. Monarchs were then generally willing to accept the Papal system in this diluted form where their rights were more or less intact and in fact steadily increasing domestically, often with Papal help, with increasing numbers of officials implementing modern governmental methods, whose salaries were paid for by the church.

To summarise, when Monnet wanted his Method and members of the High Authority to be able to rule independently, the MSs quickly put the Assembly and Council in place to contain this, effectively a chess board move, the new sovereign power would face counter organisations. Much the same as happened with the counter synods of the Emperor, both Emperor and Pope wanted similar things but with accent was to be on Imperial leadership and sovereignty of the system in the synod, or the Papal equivalent. The EDC debacle and the weakness of the supranationalists resulted in the EEC having a stronger Council and MS presence on it and a Commission with Commissioners from MSs who would be officially independent and yet unofficially increasingly represent MSs. The result of the Pope- Emperor/ monarchical stand off was first a counter Curia and Pope; which once the problematic Pope (from the monarchical perspective) had been removed and died then allowed for a new organisational structure. The choice of a new moderate Pope with a set of Cardinals with greater powers and evident connections to the Empire was then effected. Bearing in mind that the Cardinals equate, to a certain extent, to the EU Council and College of Commissioners combined then this is like the

<sup>503</sup> See note 470 Morris (2001) p.325

<sup>504</sup> *ibid* p.118, 120

<sup>505</sup> *ibid* p.122

classic method that MSs use to control the Commission and its staff. The MSs appointed a less dynamic President and College after Hallstein and Delors to moderate the Commission.

Thus organisational compromise was reached in the re-organised College of Cardinals with moderate imperial Cardinals involved and major regional independence concessions granted to monarchs to ensure they accepted the new Pope. Their domestic sovereignty safe and their external sovereignty safer via Cardinals able to counter balance the Pope more and therefore allowing greater regional representation; the balance between the two sovereign powers was gradually restored for a time. The Church Councils or synods became increasingly inclusive and often had an ambiguous status serving at times like a sovereign parliament for Christendom or just an advisory chamber. Not only that but they were capable of being combined with Emperor or Pope. At important moments in our period we have a more or less united national episcopacy gathered in a synod or Council summoned by a Monarch deciding on Papal positions, and threatening counter Popes to face off the incumbent Pope and or Council - synod and so forcing compromises. Church synods and Councils which although they had existed prior to the Reform Papacy took on a new role afterwards were excellent constitutional weapons which allowed for anti Papal forces to focus.<sup>506</sup> Monarchical agreements, such as the one at Worms, acted like the veto did and does in the EU, effectively limiting the scope of supranational actions. The empty chair policy is rather akin to the counter Pope method. In a sense medieval Christendom had surrounded the 'Gregorian Method' with constraining, more regionally oriented and finally 'democratically' inclusive organisations.

#### 1.4 THESIS THEORETICAL DEDUCTIONS

We are now at a point where various deductions can be drawn from the previous pages of theoretical considerations. As a vaccine 'pathogen' the Monnet Method has been set to work to break down barriers by engrenage, legislative output and spillover and so allow the MSs to integrate and form a European polity. It has done this successfully by fragmenting the elements of the MSs, however, the Delors era overshot the mark which led the MSs to attempt to arrest the Commission. According to the model the MSs should be dissolving the Commission along national lines to an extent and also be seen to have put into play their national networks within it, even more than usual. MS attempts should also be attempting to regain ground lost under Delors with drives to re-nationalise key policies. Effectively trying to achieve what the Treaty of Worms did as was mentioned a couple of pages back.

The Commission should find itself at a difficult point in the 'pathogen' cycle. The subsequent lack of Commission leadership after the 'arresting' of it by the MSs would leave the big gainers as the MSs, the sectors and Policy Networks linked to them. In the absence of major external areas of activity the Monnet Method would be expected to be at work in the Commission itself, fragmenting it sectorally. The lack of Commission leadership should be resulting in even greater sectoral ideological coherence and loyalty and so fragmentation of the Commission and EU.

Reforms of policy areas and the Commission itself should be being undertaken but, owing to leadership and ideological weakness, be being resisted by the DGs and Policy Networks. In some DGs the resistance could be successful. Commission leadership weakness could be problematic for the enlargement, with the sectors able to pursue and pursuing agendas which

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<sup>506</sup> Keller, H. Zwischen regionaler Begrenzung und universalem Horizont. Deutschland im Imperium der Salier und Staufer 1024 bis 1250, Berlin, Propyläen Verlag p.184



might not be favourable to the NMSs. The Commission and DGs to an extent are expected to be seen to be dissolving into warring factions, with problematic internal communication and coordination. Resultant inefficiency and policy problems should be observable and in the literature.

The Commission would be expected to be extremely bureaucratic to try and appear innocuous to the MSs. The Commission should be defensive as an organization. The Commission should show signs of trying to bring its sectoral fragmentation under control, in part via the bureaucratic controls. It is also expected to have used the controls to shut external interference out and to reform itself ready for a new integratory burst. The reforms which have resulted in the bureaucratisation should, however, not be very deep or total, so that the vaccine can re-emerge with its essential capacities intact, ready to promote intense integration again when the environment is favourable. At the same time there should be the beginnings of Commission recovery and re-organization.

Bearing in mind the Papal model, the situation in the EU is expected to have worsened, and to be getting more serious. Each immunization cycle and burst of integration should be followed by a worse period of organisational self doubt by the Commission, fragmentation and bureaucratisation. Organisational complexity and additional actors and procedures rather than reform should be the rule of the day with growing problems for democracy however defined. A window of opportunity to adopt a new governmental system and be ready for the future should be present. But the decline in idealism and integration momentum should lead to less MS solidarity, less willingness to accept idealistic rhetoric and related payments as a useful lubricant to liberalising economic benefits.

## 2. OLAF AND THE ENLARGEMENT

### INTRODUCTION

We have now considered the theoretical concerns of the thesis and laid out the model. The case studies of the six EU organisations that were investigated will be presented starting with that of OLAF, the anti fraud agency of the EU. Each case study will introduce the policy area and any related history before doing the same with the organisation operating in the area. The recent relevant changes to the organisations are examined and connections to the model made. The involvement of the organisation concerned in the enlargement process is analysed and where possible the effect of its strengths or weaknesses on the process are discussed. The reader will gradually become more familiar with the EU and in particular the Commission by sharing in the investigative probing into the organisations of which the Commission and EU consist. The sometimes long introductions to the policy area are necessary to show the organisation concerned operating in its environment. So onto OLAF!

The decade which began after the fall of the Berlin Wall saw the gradual reintegration of the countries of Eastern and Western Europe. The search for a new identity led the newly democratic states of Eastern Europe to apply for membership to international organisations e.g. NATO and the European Union (EU) which required certain democratic standards to be met and maintained and offered in exchange specific advantages. NATO offered security to states which had been invaded from the east and the west in their recent history and suffered foreign occupation. It also provided assistance in the form of advisors and technology. The EU was perceived as an organisation offering economic prosperity and thus political stability. It is the economic power in the region and not the US. The majority of the countries of Eastern and Central Europe which have applied for EU membership, (NMSs) have huge flows of imports and exports to and from the EU. Indeed the EU accounted for 70.5% of Polish exports in 1999, in 1998 it was 68.3%<sup>1</sup>. This is matched by their population flows; students, migrant workers etc.

The EU was founded to establish the peaceful interaction of democratic states with shared basic fundamental values. The EU has encouraged both economic prosperity and political stability and has discouraged war and intolerance. Would-be member states (MSs) are required to have a functioning democratic political system with respect shown for the rule of law and human rights. The goals of a common market and political stability are considered to be inseparable. Most applicant states have desired to join the EU for two clear reasons, firstly to avoid exclusion and the loss of inward investment from firms seeking to exploit the NMSs low labour costs and their potential membership of the EU, and secondly to enjoy the benefits that membership brings. Many major investors have confirmed that potential membership of the EU was and is a vital reason for their investment decision.<sup>2</sup> The benefits relate to improved economic performance, eligibility for structural funds, and the resultant political stability. As all states are required to be democratic and ruled by law, the EU thus rewards good government with economic prosperity.

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<sup>1</sup> The EU Commission's regular progress report on the Poland 2000. P.68. [http://europa.eu.int/comm/enlargement/dwn/report\\_11\\_00/pdf/en/pl\\_en.pdf](http://europa.eu.int/comm/enlargement/dwn/report_11_00/pdf/en/pl_en.pdf)

<sup>2</sup> Ms Hübner . Select Committee on European Communities Tenth Report  
<http://www.parliament.the-stationery-office.co.uk/cgi-bin/htm>



The newly democratic NMSs desired both good government and prosperity. Faced by the removal of their communist heritage and the structures and institutions that had held it in place for so long, these countries sought to find new rules, ethics and cultural orientation. Membership of various international organisations and the importation of their rules and policies were perceived to be the best and quickest solution to the vacuum which had come into existence. The prosperity and stability of the EU and its MSs was enough to attract the NMSs. It offered seemingly instant solutions to problems and the means to implement them. Membership of the EU was perceived as a means of ensuring that the NMSs were not relegated to developing nation status.

But both the EU and the NMSs were in a state of flux, in part due to the enlargement but also due to problems in their governmental systems. Both seemed to have problems of corruption, the Commission's being related to mismanagement and problematic structures. One effective solution to the problems of inefficiency and corruption in both, would have been a powerful, well organized and resourced Commission department to lead a drive for top quality management and a corruption free environment. For the Commission and EU a major reorganization and rationalisation were also essential. Both these would have helped ensure that the Commission and the other institutions were corruption free and thus able to concentrate on assisting the NMSs efficiently. The new Commission anti fraud agency OLAF was widely heralded as the Commission's immediate answer to its internal problems and, as to the problems facing NMSs. The question was would OLAF live up to expectations, or rather would it be allowed to?

## 2.1 EU AFTER THE SANTER CRISIS

In 1999, the European Commission resigned. A wide range of problems and mismanagement in the Commission were identified by the Committee of Independent Experts in their report. It revealed that the Commission was suffering from the worst aspects of negative bureaucratisation, namely, mismanagement and behaviour by officials bordering on the corrupt. What was most alarming was the absence of control mechanisms, channels of responsibility and accountability. The absence of such controls ensures that negative bureaucratisation can take on the forms of corruption and inefficiency that affect processes like financing enlargement projects. Corruption was implicit in many of the allegations made against the Commission. Some are listed below:

Concerning the Commission's financial control in the 1990's, corruption could be perceived as being almost encouraged. The Commission failed to control the external companies it contracted work to, and seemed, in fact, to have been controlled by them. Many of these points are typical examples of corruption. Indeed, a situation prevailed not unlike that in the NMSs which the same Commission was evaluating. Only, in the cases discussed in the report, the unit did not consider it necessary to do very much apart from comment.<sup>3</sup>

Regarding the need for collaboration, there was little co-operation between OLAF (the pre OLAF anti fraud department) and the national authorities, who are, according to EU legislation, responsible for judicial investigations.<sup>4</sup> In fact, two of the investigative organs of the EU

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<sup>3</sup>The Committee of Independent Experts First Report on Allegations regarding Fraud, Mismanagement and Nepotism in the European Commission 1999 [http://www.europarl.eu.int/experts/4\\_en.htm](http://www.europarl.eu.int/experts/4_en.htm) ; 5.4.2; 5.4.3; 5.4.4,

<sup>4</sup> ibid sections 9.4.14, 9.4.15

actively impeded each other.<sup>5</sup> As far as the need to guarantee a specialised and properly trained unit was concerned, UCLAF had over half its staff on three year contracts, data bases were not totally functioning and files were not managed properly.<sup>6</sup>

Immunity or rather the over use and abuse of immunity regulations was a major problem for both the supra-national Commission and the NMSs which, all too often, appear to be unwilling to suspend immunity from prosecution, even when clearly criminal acts have taken place. This naturally was not the intention of the Treaty of Rome when it allowed immunity to be extended to EU employees working in the institutions, so as to maintain their sense of independence from MSs. There was a need to provide for disciplinary action and the dismissal of officials and personalities which was notably lacking in the Commission. Often, implicated staff were left within the organisation even though evidence was there for prosecution. Only rarely were disciplinary procedures launched and all too often there were no guidelines regarding administrative investigations.<sup>7</sup>

There were, in fact, other difficulties which the Commission had in common with the NMSs. These are; lack of clear definitions, confusing rules and legislation, problems with outsourcing, lack of skilled personnel and an environment which was seemingly ambivalent towards corruption. These points will now be addressed in turn.

If the problem of the definition of corruption is considered, there was a definite need for greater precision and consistency.<sup>8</sup> Confusion regarding legislation, rules and procedures prevailed during the 1990's.<sup>9</sup> As stated earlier, this deficit can be crucial when combating corruption.

The problems relating to reliable staff were referred to earlier. In addition there was an absence of any security vetting procedure to ensure that the delicate information in daily use remained confidential. It should be pointed out here that other Commission departments involved in financial control had also not been vetted.<sup>10</sup>

The problems relating to outsourcing have already been referred to, but any implementation of EU programmes by private contractors should only have been accepted if proper controls had remained in the Commission's hands, something that had not occurred.<sup>11</sup> In general, the manner in which outsourcing had been managed by the Commission was far from effective with some of the basic rules relating to public procurement being ignored.

As to the existence of an anti-corruption environment, a zero tolerance policy had yet to be implemented implying that this was not yet the situation.<sup>12</sup> As the example of Mr Paul Van Buitenen, the auditor who exposed many Commission weaknesses in a letter to the EP showed, any member of the Commission who spoke out against corruption and fraud and exposed such practises was at risk of himself being disciplined, hardly a positive environment to suppress corruption.

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<sup>5</sup> See note 3 The Committee of Independent Experts First Report sections 9.4.19 and 4.2.14

<sup>6</sup> Court of Auditors Special report 8/98 on UCLAF, Paragraphs 1.6, 3.10-3.18, 3.30-3.34, [http://www.eca.eu.int/EN/RS/1998/rsc\\_230en.htm](http://www.eca.eu.int/EN/RS/1998/rsc_230en.htm)

<sup>7</sup> *ibid* section 6.10; 6.11

<sup>8</sup> Communication from the Commission on the protection of the communities' financial interests 28.6.2000 states; "the creation of common definitions will facilitate information exchanges and co-operation."

<sup>9</sup> Mr. Brüner; OLAF first report, [http://europa.eu.int/comm/anti\\_fraud/documents/rapport\\_en.pdf](http://europa.eu.int/comm/anti_fraud/documents/rapport_en.pdf)

<sup>10</sup> See note 6 Court of Auditors Special report 8/98 sections 2.28, 2.29. Namely DGXX

<sup>11</sup> See note 3 The Committee of Independent Experts First Report section 5.8.3

<sup>12</sup> See note 6 Court of Auditors Special report 8/98 section 6.9



The Commission's role in fighting fraud was clear enough although its implementation was often far from comprehensive and therefore often criticised, but in the field of corruption this was not the case. UCLAF was after all an internal department of the Commission and not independent, how could it be expected to carry out investigations on the institution of which it was itself part? As was to be expected, the position of UCLAF was far from clear and as the Commission held it to be responsible for internal investigations, this in turn left a vacuum which was methodically exploited. Most of the internal mechanisms for inquiry and control lacked any real legal basis.<sup>13</sup> After UCLAF the Commission emphasised that it would take measures to deal with internal fraud and corruption.<sup>14</sup>

The Commission often cited under-staffing as being the cause of many of its shortcomings<sup>15</sup> for both under-spending and its inability to control corruption and fraud, but, although staffing was an issue, in reality, technical assistance offices (TAOs) had taken over vast amounts of the Commission staff's work. The MSs had tacitly accepted both this status quo, and also the fact that large numbers of staff were employed indirectly through many, so called, submarine methods and personal connections.<sup>16</sup> Furthermore, the MSs were willing to accept increases in staff numbers but only on condition that the Commission reorganise itself and its procedures first.<sup>17</sup> Otherwise, as is so often the case with bureaucratic institutions, the quality changes in terms of procedures and staff allocation and training that are necessary, would once again be substituted for simple increases in the quantity of staff and complexity of ineffective paper controls. The Commission had reluctantly met some of the criteria thus enabling staff increases to occur, but more needed to be done before more staff could be recruited.

An interesting digression, Commission reform was essential for efficiency and for enlargement. However, this logic was turned into a circle by politicians in the NMSs<sup>18</sup> who stated that without enlargement no meaningful reform would occur in the EU and inefficiency and bureaucratisation would be the result. They may well be right and that the enlargement forced the Commission to undertake many reforms that it would probably have preferred to avoid. But it was also the case that the inefficiency of the Commission with regard to enlargement was, at times, problematic. Unfortunately, the Commission reforms were bitterly resisted and it remained inefficient in its activities and in particular where the NMSs were concerned. What was necessary was a reform of the Commission's financial procedures and a streamlining of the decision making processes. Instead, in response to corruption allegations, the Commission tightened up its procedures still further, adding complications to an already over complex system.

The reform embodied in the new agency (OLAF) was no exception to the Commission's reluctance to radically reorganise and reform. Real radical reform was accepted in principle but not fully in practice. Yet, public funds were at risk, since corruption was not likely itself to be affected by the new rules, and the socially needy in the applicants states remained 'un' or under funded. In fact, enlargement was itself at risk as negative bureaucratisation threatened the

<sup>13</sup> See note 3 The Committee of Independent Experts First Report sections 9.4.18-19

<sup>14</sup> *ibid* section 2.2. "...and again the Commission stresses that, "in the area of internal policies and external actions, the Commission, which has direct management responsibility, will arrange to take all the requisite measures to prevent and combat fraud or corruption."

<sup>15</sup> Select Committee of International development First Special Report (1999) <http://www.parliament.the-stationery-office.co.uk/pa/cm199900/cmselect/cmtrdind/835/83502.htm> accessed 30.9.2001

<sup>16</sup> Select Committee on International Development Ninth Special Report (2000) <http://www.parliament.the-stationery-office.co.uk/pa/cm199900/cmselect/cmintdev/949/94902.htm> accessed 30.9.2001

<sup>17</sup> See note 16 Select Committee on International Development Ninth Special Report (2000)

<sup>18</sup> House of Lords - European Communities - Twenty-First Report.htm. <http://www.parliament.the-stationery-office.co.uk/cgi-bin/htm>

speed of the NMSs' accession and the Commission's ability to function effectively afterwards.

## 2.2 THE CREATION OF OLAF

The creation of UCLAF, OLAF's predecessor in 1989 was as a result partially of the EP's insistence. The EP again applied pressure to create OLAF in 1999. It had wider powers than those of UCLAF which reflected, in part, the need of the Commission to be reformed before enlargement. However, the real reason for OLAF were the negative reports made, by the Austrian MEP Bösch of the EP<sup>19</sup> and the Committee of Independent experts<sup>20</sup> in response to the Court of Auditor's report of 8/98.<sup>21</sup> It was the snowball effect that these reports that caused UCLAF to be so rapidly superseded by OLAF in June 1999.<sup>22</sup> Most of the recommendations made were acted upon, but finally OLAF was very much the result of an EP-Commission compromise. And yet it is possible to consider that the Commission itself was evaluated and goal posts set by external institutions and corruption emerged into a politicised force with the resignation of the College of the Commission and the institution Commission itself facing a credibility crisis. The application of external pressure and evaluation methods often alien and foreign to the NMSs being evaluated was similar to the experience of the Commission in the light of the reports and then the recommendations made by Commissar Kinnock. The recommendations made in his consultation document "Reforming the Commission"<sup>23</sup> were regarded by some influential forces in the Commission as being an attempt to "force" an alien "northern" or "British" model of public service management onto the Commission.<sup>24</sup>

The fall of the Santer Commission showed that mismanagement and corruption could become politicised very quickly and were seemingly a very effective political tool. The European Parliament (EP), in part, used the corruption instrument not only to remove the Commission and to extend its own influence. The new agency founded in 1999 represented a development in the system of checks and balances in the communities and that it was possible to say that the legislative control of the executive had been somewhat extended and the democratic deficit had been somewhat addressed.<sup>25</sup> This could have been perceived as a positive outcome were it not for the fact that members of the EP were also instrumental in hampering the workings of the OLAF. 80 of its MEPs brought a case before the European court to try to restrict OLAF's right vis-à-vis the MEPs and the EP to carry out investigations.<sup>26</sup> This last case seems to have been successful as the 2002 ECR II – 00579 case of 26.02.2002 confirmed that OLAF had the right to search premises in the European parliament. Which left the question open as to the EP's real motives, greater accountability or simply power brokering and using corruption as a tool?

The creation of OLAF was a decision to favour an administrative solution to the Commission problem. OLAF was also an integral part of the integratory process encouraging the co-

<sup>19</sup> Bösch, H. European Parliament report, <http://www2.europarl.eu.int/omk/OM-Europarl?PROG=REPORT&L=EN-&PUBREF=-//EP//NONSGML+REPORT+A4-1998-0297+0+DOC+PDF+V0//EN&LEVEL=3>

<sup>20</sup> Select Committee on Trade and Industry Twelfth Report (2000) <http://www.parliament.the-stationery-office.co.uk/pa/cm199900/cmselect/cmtrdind/835/83502.htm> accessed 30.9.2001

<sup>21</sup> See note 6 Court of Auditors Special report 8/98

<sup>22</sup> Dr. Lothar Kuhl and Harald Spitzer; Das Europäische Amt für Betrugsbekämpfung (OLAF). EuR-Heft-2000 p.1

<sup>23</sup> Kinnock, N. Reforming the European Commission a white paper. 1.3.2000 COM (2000) 200 final

<sup>24</sup> House of Commons select Committee on European communities seventeenth report section 162 <http://www.parliament.the-stationery-office.co.uk/cgi-bin/htm>

<sup>25</sup> See note 22 Kuhl; Spitzer (2000) p.15

<sup>26</sup> OJ C 102/30 EN 8.4.2000. [http://europa.eu.int/eurlex/en/thematic/coj/2000/c\\_102/c\\_10220000408en00300031.pdf](http://europa.eu.int/eurlex/en/thematic/coj/2000/c_102/c_10220000408en00300031.pdf)



operation of the MSs and ensuring that this followed. It was able to advise and to operate within other MSs to combat fraud and corruption which endangered EU funds.<sup>27</sup> That said, the main aim of the office was to directly address the threat of corruption and mismanagement within the EU institutions.<sup>28</sup> The Communication from the Commission on the protection of the Communities' financial interests,<sup>29</sup> made it very clear that fraud and corruption were utterly intertwined and very much the Commission's concern throughout the area of the EU and this concern would of course also stretch to the NMSs. OLAF was necessary to effectively act against corruption in numerous countries, as only it was able to be effectively pro-active in this field, implicitly the agencies available in other states were less so.<sup>30</sup> The Commission emphasised that it would take measures to ensure that internal fraud and corruption were dealt with.<sup>31</sup>

It should be stressed that the Commission and the EU apparently chose a quick fix administrative adjustment first rather than a major reform. At the same time, in a paper addressed to the Commission in October 2000, the intention was stated to finally implement in the future more effective agreements that had actually been made a year previously. That was to make the Commission's staff regulations compatible with the obligations placed on staff in the Inter-institutional Agreement of 25.05.1999, to report wrong doing.<sup>32</sup> Again, the real reform lagged behind, the office was created first with considerable powers and responsibilities, but under-resourced and without a supportive change in staff regulations.

OLAF was granted extensive rights to carry out investigations throughout the EU institutions and given a semi-independent status within the Commission.<sup>33</sup> It was to organise and co-ordinate all anti-corruption activities within the institutions and can be directly contacted by any concerned official.<sup>34</sup> In addition, it was to co-ordinate with MS police and judicial forces, to ensure that prosecutions were effected if necessary. The office was responsible for coordinating MS efforts at combating organised crime and therefore corruption.<sup>35</sup> Tasks which OLAF carried out lay also within its remit, namely training, providing information and analysis of fraud and corruption statistics to EU institutions and proposing legislation to fraud proof legislation and encourage transparency.<sup>36</sup> It is fair to say that OLAF lies at the heart of the Commission's anti-corruption activities and is its favoured method of combating corruption.

To approach the topic of the enlargement of the EU; there were many hindrances to it and one was that communism encouraged the proliferation of bureaucratic structures and institutions throughout the NMSs. Not surprisingly these structures had proved to be as vulnerable, as their western counter parts, to bureaucratic inertia, stagnation and reluctance to reform. Inefficiency abounded as these bureaucracies became more complex and this had serious repercussions for the societies in these countries. The only way of cutting through red tape delays was probably the use of corruption which flourishes where complex, opaque rules and laws are in

<sup>27</sup> Article 280 EC Treaty developed from Article 209a EC Treaty and Communication from the Commission, 29.09.2000. COM (2000) 608 final p.10

<sup>28</sup> See note 22 Kuhl; Spitzer (2000) p. 1

<sup>29</sup> See note 8 Communication from the Commission on the protection of the communities' financial interests 28.6.2000

<sup>30</sup> *ibid* section 2.1 OLAF is described as being an; "observatory of fraud and corruption so as to supply the logistical support to member states and institutions"

<sup>31</sup> Section 2.2 and again the Commission stresses that; "in the area of internal policies and external actions, the Commission, which has direct management responsibility, will arrange to take all the requisite measures to prevent and combat fraud or corruption."

<sup>32</sup> Communication from Mr. Kinnoek to the Commission; *Raising concerns about wrong doing*. 25.10.2000. p. 7

<sup>33</sup> See note 22 Kuhl; Spitzer (2000) p. 5

<sup>34</sup> *ibid* p. 11

<sup>35</sup> *ibid* p. 12

<sup>36</sup> *ibid* p. 6.

force, where there is inefficiency in the distribution of resources and services, leading to demand dramatically exceeding supply and where accountability systems are lacking and effective management is minimal. This was true of the NMSs and it was something which the EU, the Commission and the international community would be expected to be serious about combating. They would also be expected to be strengthening the democratic, social, economic and justice institutions, and media of the NMSs. In other words in order for negative bureaucratisation and corruption to be tackled, radical reforms were necessary; one of which had to be addressed was a total reform of bureaucratic structures, in part achieved by empowering individuals and groups, both inside and outside the structures in question, to hold erring civil servants and departments to account. Unfortunately morale and wages in the NMS bureaucracies had fallen badly, which also encouraged some corruption as officials seemingly used their positions to make up wage losses.

### 2.3 OLAF AND THE ENLARGEMENT

A closer examination of the actual process of enlargement being implemented by the EU is useful at this point. The suspicions of the EU with regard to the NMSs' ability to fight both corruption and crime, and to compete fairly and effectively in the Union led to a period of transition, in which both parties attempted to prepare themselves for the actual enlargement. The Commission and MSs adopted a strategy for guiding and modelling the NMSs, implicit was the notion that both represented functioning models for the NMSs to observe and copy.

NMSs had the opportunity to participate in some aspects and projects of the Union. Their representatives were often invited to attend summits and discussions at which relationships and networks could be fostered. They were expected to accept and participate in the many programmes and projects,<sup>37</sup> which were set up with the intention of rapidly upgrading bureaucracies whilst gradually incorporating the NMSs into EU decision making processes. Many 'twinning' arrangements between MSs and their opposite partners in their NMSs encouraged the modelling of the latter to achieve standards laid out in the projects mentioned above. Accession partnerships between the Commission and the NMSs allowed the NMSs to actively work together with the Commission to reach certain goals in the preparation of their countries for accession. So whilst formal enlargement had yet to take place a gradual integration proceeded and reached a point where some institutions, procedures and laws of NMSs reflected the standard of other MSs.<sup>38</sup>

The second element is the adoption and incorporation of a huge amount of EU laws and directives, otherwise known as the *acquis communautaire* (*acquis*).<sup>39</sup> The NMSs had to submit their entire political and economic systems to be scrutinised by various EU delegations which issued reports on their progress. In particular, a yearly progress report was issued by the Commission in which all the major chapters of the *acquis* were listed and the country in ques-

<sup>37</sup> PHARE; OCTOPUS, etc. Projects jointly funded by the EU, Council of Europe and the US government.

<sup>38</sup> See notes 1 progress report on the Poland 2000 and EU Commission's regular progress report on Bulgaria 2000 [http://europa.eu.int/comm/enlargement/dwn/report\\_11\\_00/pdf/en/bg\\_en.pdf](http://europa.eu.int/comm/enlargement/dwn/report_11_00/pdf/en/bg_en.pdf) p.17 and EU Commission's regular progress report on the Czech Republic 2000 p.21 [http://europa.eu.int/comm/enlargement/dwn/report\\_11\\_00/pdf/en/cz\\_en.pdf](http://europa.eu.int/comm/enlargement/dwn/report_11_00/pdf/en/cz_en.pdf)

<sup>39</sup> A collection of rules, conventions and directives are the legal foundation of the Community and include a lot concerning fraud and corruption, with both first and third pillar origins. The first pillar refers to where the Supranational Community has control and the third pillar refers to the inter-governmental element of the Union, criminal justice falls under this pillar as part of Justice and home affairs. In addition, there are many conventions made by international organisations, which applicant states are required to accept and incorporate into their legislation. Additional information available from Van den Wyngaert .C: 26.9.2000 Study on "Penal and Administrative Sanctions. Settlement, Whistle blowing and Corpus Juris in the Candidate Countries" p5-7



tion was examined to ascertain in how far they had incorporated and implemented the requirements of the given chapter. In the 2000 reports the issue of corruption was highlighted as being a major cause for concern.<sup>40</sup>

The significance of corruption and its associated ills; fraud and organised crime, for the enlargement process was clearly shown in the progress report 2000 for the Czech republic.<sup>41</sup> Few other issues were raised as often throughout the chapters. Indeed, the problems of corruption were mentioned under the basic criteria for membership, the so called Copenhagen criteria.<sup>42</sup> These criteria were listed at the front of the regular reports and then sub-divided under political, economic headings. Under political criteria, the Czech report stated that although the Czech Republic continued to fulfil the political criteria more needed to be done to combat organised crime and corruption.<sup>43</sup> This concern was repeated under the heading, "Democracy and the rule of law" and the connection between corruption and a decrease in investment was made.<sup>44</sup> It occurred again under obligations for membership.<sup>45</sup> Under the individual chapters corruption was a recurring theme. As these chapters remained unclosed for a somewhat long duration they were clearly important for the Commission and the NMSs. Corruption was addressed directly and or indirectly as a problem under the following chapters; Co-operation in the field of justice and home affairs; Financial control and Financial and budgetary control. Finally the conclusion and accession partnerships in the reports stressed the importance of corruption several times.<sup>46</sup>

The Commission could, directly as joint evaluator of the NMSs applications, and indirectly as arbiter of article 280 EC and creator of anti-fraud policies and instruments included in EU projects,<sup>47</sup> put great pressure on NMSs to combat corruption. OLAF was responsible for the Commission's anti-fraud and corruption policies and sent regular statistics and analyses on fraud and corruption to the Commission. The Commission favoured OLAF not only to combat internal corruption but also to set a model for the NMSs. This was made clear in the communication from the Commission on the protection of the communities' financial interests.<sup>48</sup> The same communication stated that the existence of other anti-corruption agencies within the NMSs would not be sufficient for the Commission.<sup>49</sup>

The EU to which the NMSs aspired to acquire membership was itself vulnerable to mismanagement and corruption as has been made clear. The presence of corruption and mismanagement in the institutions<sup>50</sup> prior to enlargement eastwards, and a general inability to take realistic measures to bring the situation under control, endangered enlargement in the short term and the institutions themselves in the longer term. In the short term because the NMSs had to reach certain strict criteria related to fraud and corruption in their progress reports in order to

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<sup>40</sup> EU Commission's regular progress report on Bulgaria 2000 [http://europa.eu.int/comm/enlargement/dwn/report\\_11\\_00/-pdf/en/bg\\_en.pdf](http://europa.eu.int/comm/enlargement/dwn/report_11_00/-pdf/en/bg_en.pdf)

EU Commission's regular progress report on the Czech Republic 2000 [http://europa.eu.int/comm/enlargement/dwn/-report\\_11\\_00/pdf/en/cz\\_en.pdf](http://europa.eu.int/comm/enlargement/dwn/-report_11_00/pdf/en/cz_en.pdf)

The EU Commission's regular progress report on the Poland 2000.. [http://europa.eu.int/comm/enlargement/dwn/-report\\_11\\_00/pdf/en/pl\\_en.pdf](http://europa.eu.int/comm/enlargement/dwn/-report_11_00/pdf/en/pl_en.pdf)

<sup>41</sup> EU Commission's regular progress report on the Czech Republic 2000

<sup>42</sup> These arose from the Copenhagen European Council in 1993 and stipulate that countries must achieve, "stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities."

<sup>43</sup> See note 41 regular progress report on the Czech Republic 2000p.16

<sup>44</sup> *ibid* p.21

<sup>45</sup> *ibid* p. 40

<sup>46</sup> *ibid* p. 88; 97; 102; 109.

<sup>47</sup> See note 8 Communication from the Commission on the protection of the communities' financial interests 28.6.2000

<sup>48</sup> *ibid*

<sup>49</sup> *ibid*

<sup>50</sup> See note 3 The Committee of Independent Experts First Report (1999)

be allowed to accede, and because the Commission became even more stringent with regards to payments made to the NMSs after the 1999 crisis. In the long term fraud and corruption were a major problem for the Commission, which was vulnerable to both.<sup>51</sup> The larger the audit fields the more difficult it becomes to control resources. Enlargement will greatly enlarge such fields.<sup>52</sup> The weaknesses in the NMSs' public administrations caused the Court of Auditors anxiety.<sup>53</sup> The Commission was fully aware of the potential dangers and no doubt this also resulted in harder requirements for the NMSs to fulfil which was shown by the priority set on the subject in the regular reports mentioned earlier.

However, the Commission, which was organising the enlargement process, was going through an extremely bureaucratic period and logically enough encouraged similar bureaucratic arrangements in the NMSs. Apparent Commission weakness and inability to resolve it also seemed to have lain behind the pressure applied to the NMSs. Firstly it encouraged them to more or less copy OLAF as an organisation, in part, it would appear for the NMS organisation to do the work that a fully resourced OLAF would normally do. Secondly it pressurised them in general to do more than had been done with previous enlargements, despite the over burdened situation of the NMS administrations. There was a sense in which the Commission decided to apply pressure on NMSs, to improve their corruption fighting capacities to avoid real reform in Brussels. Routine, time consuming work was seemingly delegated back to the other MSs and NMSs along with most of the responsibility and criticism. The NMSs in particular came in for considerable amounts of the latter. They were less able to resist the Commission's pressure and are therefore more malleable. Was OLAF appropriate as a model for agencies in the NMSs? Whilst no doubt it made sense for the Commission to have organisations in the NMSs that could easily deal with OLAF, it seems to be equally clear that OLAF was a very specialised, compromise solution for a specific EU problem. Many of the criteria for which OLAF was created, for example investigating police free institutions using administrative measures, simply were not the situation in the NMSs. And yet the progress reports made it clear that an OLAF organisation was essential and nothing else was sufficient.<sup>54</sup> The suspicion must be that the Commission needed to export its administrative problems to the NMSs. The NMSs with their problematic civil services and struggling states were required to help the Commission out, or that is how it could be considered. Similar things have been said by NMS officials with regard to the Cohesion Policy; that the Commission's insistence on NMS administrative capacity was to cover for their own lack.

The desire of the Commission to protect its financial resources as effectively as possible is clear. OLAF had been set the task of organising anti-corruption measures internally and to some extent to set the example externally. The office should have been in a position to fully implement anti-corruption investigations in order for the Commission to seem to be credible in its reform impulse. If this were not the case then comments made in the past that; "attempts to manage change within the Commission have tended to lose momentum,"<sup>55</sup> and, that the failure of the Commission to reform may well endanger other areas implicitly including enlargement, may well prove correct.<sup>57</sup> The failure of the reforms made by the Commission would lead to a double crisis of credibility, in the eyes of the general public in the present

<sup>51</sup> Communication from the Commission. 29.9.2000. COM (2000)608. p.5

<sup>52</sup> Mr Karlsson of the EU Court of Auditors stated in 1999 to EUR-OP News. Mr Karlsson, EUR-OP News 4/99 <http://www.eur-op.eu.int/opnews/499/en/i0111.htm> accessed 30.7.2001

<sup>53</sup> *ibid*

<sup>54</sup> See note 1 progress report on the Poland 2000 section 2.3, p. 80 p.109

<sup>55</sup> See note 41 regular progress report on the Czech Republic 2000 p.91, p.109 (p.80).

<sup>56</sup> Select Committee on European Scrutiny Fourteenth Report mentioning the Court of Auditors comment. <http://www.parliament.the-stationery-office.co.uk/cgi-bin/htm>

<sup>57</sup> *ibid*



MSs who had had their awareness of corruption in the Commission and the EU steadily raised as a result of Media coverage, and in the eyes of the NMSs who had had high targets set for them to fulfil with regard to corruption as well as other areas.<sup>58</sup>

## 2.4 THE PROBLEM WITH EU CONTROLS

We will now consider the dangers of Commission anti-corruption measures to the financial flow side of the enlargement process. Negative Commission bureaucratisation had links with EU corruption, particularly in the attempt to be seen to be fighting all corruption. Unfortunately complex financial procedures combined with a plethora of financial control agencies, often duplicating and hindering each others' work, ensured that little if any impact had been made on the high fraud and corruption figures.<sup>59</sup> Despite this the Commission favoured further apparently not terribly effective, bureaucratically complex anti-corruption measures to combat the problem.<sup>60</sup> However, these only served to put off some honest project organisers from making an application for funds in the first place. All of these worked to the detriment of enlargement preparations. It must be stressed that recent allegations about corruption and fraud in the EU have understandably fostered an environment of even greater caution and unwillingness to allow vital payments to be made unless there are enough reports and paper work to protect the Commission from responsibility.<sup>61</sup> However this knee jerk reaction was unlikely to improve either the implementation of projects or the soundness of payments made.

PHARE, the EU project aimed at preparing the NMSs for accession by improving their institutions, revealed many of the weaknesses and limitations of the Commission in relation to organising and implementing projects. A curious fact was that PHARE consistently underspent its budget with only 60 per cent of the money available spent.<sup>62</sup> The Commission was unable to disburse the financial resources made available to it and as a result they were restored to national treasuries and with a couple of exceptions spent on national requirements.<sup>63</sup> The projects themselves were subject to long delays between project identification and implementation, administrative inflexibility and excessive costs and delays in amending contracts.<sup>64</sup> Significant backlogs existed which led NGOs to complain that they were not paid on time.<sup>65</sup> Sometimes contractual obligations were unmet.<sup>66</sup> Constant administrative delays in making funds available added to the problem.<sup>67</sup> Delays were caused by the complex and confusing contracting and tendering processes.<sup>68</sup> In fact the nature of the PHARE projects would appear to have been one of delay, complexity and inefficiency. The Commission also preferred large projects and western consultants to smaller more effective projects and locally trained consultants.<sup>69</sup> This of course also resulted in delays and extra costs.

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<sup>58</sup> Volker Wagener, Deutsche Welle 18.03.1999, Kommentar; Hochmut kommt vor dem fall

<sup>59</sup> See note 3 The Committee of Independent Experts First Report

<sup>60</sup> See note 16 Select Committee on International Development Ninth Special Report (2000)

<sup>61</sup> *ibid*

<sup>62</sup> Parliamentary examination of witnesses in 1998, question 273 it was stated that the, "PHARE programme are underspent and only 60 per cent of the money available has been spent". <http://www.parliament.the-stationery-office.co.uk/cgi-bin/htm>

<sup>63</sup> *ibid*

<sup>64</sup> Select Committee on Trade and Industry Twelfth Report <http://www.parliament.the-stationery-office.co.uk/cgi-bin/htm>

<sup>65</sup> *ibid*

<sup>66</sup> See note 15 Select Committee of International development First Special Report (1999) Government's response.

<sup>67</sup> See note 64 Select Committee on Trade and Industry Twelfth Report

<sup>68</sup> Select Committee on International Development Minutes of Evidence. 1998 Report <http://www.parliament.the-stationery-office.co.uk/cgi-bin/htm> accessed 12.11.2001

<sup>69</sup> Select Committee on European Communities Thirty-Third Report (1998) <http://www.parliament.the-stationery-office.co.uk/pa/ld199798/ldselect/ldcom/157/15701.htm> accessed 30.9.2001

Part of the reason for the malaise outlined above seemingly lay in the Commission's dependence on antiquated, complex administrative techniques, financial regulations<sup>70</sup> and paper work, combined with a deep seated lack of trust in other evaluation methods and the beneficiaries themselves.<sup>71</sup> The budget was very complicated with many different budget lines often involved<sup>72</sup> and had been called upon to be simplified. Political priorities were over emphasised during budgeting allocation leading to inefficient and ineffective budgetary decisions being made.<sup>73</sup> There were over 47 different procedures for accessing money which the Commission wanted to reduce to seven.<sup>74</sup> Several reports constantly stressed the confusing, highly complex financial regulations which dominated Commission spending and ensured that delays occurred.<sup>75</sup> Time durations of over four years were referred to between the date that money was committed for a programme and when it was disbursed by the Commission.<sup>76</sup> The constant delays which plagued every stage in many a project's lifecycle resulted in expensive consultants' time being spent in discussions, as targets were readjusted to face the changing situation on the ground and in contract management discussions with the Commission. As a result, management costs comprised a large proportion of total project costs.<sup>77</sup>

More fundamental reasons lay in over-centralised control in Brussels, where political and; "budgetary spending pressures favoured a strong emphasis on financial and procedural control rather than substantive programme design and performance."<sup>78</sup> This meant that despite a decentralised approach to implementation, expertise in financial and administrative procedures remained centralised. Long established power building strategies are not easily set aside. This could weaken the impact of a programme's progress.<sup>79</sup> As a result of internal Commission problems many programmes were interrupted or; 'lost their sense of direction'.<sup>80</sup>

Controls are essential for any project and yet the type of control favoured by the Commission placed over emphasis on reports written about performance rather than performance itself.<sup>81</sup> The Commission relied over much on ex-ante controls and micro management in its implementation strategy.<sup>82</sup> Financial controls are important but not the variety practised by the Commission. Rather, the EU needed to reform itself and to concentrate on planning and set-

<sup>70</sup> See note 16 Select Committee on International Development Ninth Special Report (2000)

<sup>71</sup> Select Committee on European Communities Minutes of Evidence Examination of witness (Questions 280 - 293) Wednesday 1.07.1998. <http://www.parliament.the-stationery-office.co.uk/cgi-bin/htm>. Dr. Hindson stated. "EU is one of the worst donor agencies for relying solely on a lot of written reports. The EU receives a vast amount of documentation that no one can possibly read. It bases the success of projects on what people say they have achieved in reports." "The EU relies on written summary reports rather than evidence from the people it is working with. It is very easy to get that evidence—even photographs showing change."

<sup>72</sup> Select Committee on European Scrutiny Thirty-First Report (1999) <http://www.parliament.the-stationery-office.co.uk/cgi-bin/htm> accessed 30.9.2001

<sup>73</sup> See note 15 Select Committee of International development First Special Report (1999)

<sup>74</sup> *ibid.* In 1998

<sup>75</sup> *ibid*

<sup>76</sup> See note 16 Select Committee on International Development Ninth Special Report (2000)

<sup>77</sup> Select Committee on European Communities Minutes of Evidence 1998 <http://www.parliament.the-stationery-office.co.uk/cgi-bin/htm> accessed 12.11.2001

<sup>78</sup> See note 69 Select Committee on European Communities Thirty-Third Report (1998)

<sup>79</sup> *ibid*

<sup>80</sup> Select Committee on European Scrutiny Fourteenth Report (1999) <http://www.parliament.the-stationery-office.co.uk/pa/cm199899/cmselect/cmeuleg/34-xiv/3402.htm> accessed 30.9.2001. "The implementation of certain programmes suffered from too many interruptions (political changes, staff turnover at the Commission), whereas other programmes that had clearly lost any sense of direction were being carried on by force of inertia ... which prevented them from being abandoned or redirected."

<sup>81</sup> See note 71 Select Committee on European Communities Minutes of Evidence Examination of witness (Questions 280 - 293) Wednesday 1.07.1998

<sup>82</sup> See note 72 Select Committee on European Scrutiny Thirty-First Report (1999)



ting realistic objectives. Further, it should have devised a better system of financial controls and a better division of responsibilities.<sup>83</sup>

This led to a situation in which the Commission was accused that; 'the right hand did not know what the left hand was doing.'<sup>84</sup> The Commission was generally seen as not; 'having got it right yet'<sup>85</sup> so far as increasing the speed and efficiency of disbursements or project management was concerned.<sup>86</sup> There were constant demands and plans for a streamlining of the financial regulations, the budgetary procedures and management methods. And yet the demands for change and at the same time for more anti-fraud and corruption protection will in all likelihood make the already under-spending institution spend even less.<sup>87</sup>

This last point is relevant when the Commission and the EU's response to corruption are considered. The increased pressure for accountability was already resulting in a situation where; 'the system was starting to seize up.'<sup>88</sup> The danger was quite evident that payments would be delayed even further, since reorganisations of the Commission often result in late payments.<sup>89</sup> The continuing and increased delays exacerbated the already strained relationships between NMSs and the EU<sup>90</sup> and might have resulted in enlargement being postponed and endangered. The irony was that the delays in payment, due to more stringent anti-fraud and corruption concerns, might have hindered the implementation of PHARE projects aimed at relieving the corruption that gave rise to the concerns in the first place.<sup>91</sup> There was a very real danger that anti-corruption reform in the NMSs for the Commission meant in practice incorporating procedures, employing more staff and carrying out staff training much along the Commission's own lines. In order to make progress towards receiving membership and funding the NMSs had to get used to writing Commission style reports and accepting its somewhat dubious role model.

## 2.5 THE EFFECTIVENESS OF OLAF

Unfortunately the report made by the supervisory Committee of OLAF seemed to paint a far from glowing picture of the period of transition of the agency.<sup>92</sup> The OLAF retained many of the weaknesses of UCLAF and was still dependent on the Commission for its budget. This affected its ability to recruit and obtain sufficient resources to effect the vast range of tasks given it. It was in any case far from being the agency necessary to combat the many deficits listed by the committee of experts, but it was the lack of adequate resources which could worst affect the fight against corruption.

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<sup>83</sup> See note 72. Select Committee on European Scrutiny Thirty-First Report (1999) The EU must; '... focus on results in relation to strategic objectives, with clearer responsibilities and a better system of administrative and financial control.'

<sup>84</sup> See note 15 Select Committee of International development First Special Report (1999)

<sup>85</sup> *ibid*

<sup>86</sup> *ibid*

<sup>87</sup> *ibid*

<sup>88</sup> *ibid*

<sup>89</sup> *ibid*

<sup>90</sup> See note 64 Select Committee on Trade and Industry Twelfth Report

<sup>91</sup> *ibid*

<sup>92</sup> OLAF supervisory Committee progress report July 1999-July 2000 p. 40 conclusion. [http://europa.eu.int/comm/anti\\_fraud/documents/rapport2\\_de.pdf](http://europa.eu.int/comm/anti_fraud/documents/rapport2_de.pdf) and

OLAF supervisory Committee progressreport July 2000-September 2001

[http://europa.eu.int/comm/anti\\_fraud/documents/rapport2\\_de.pdf](http://europa.eu.int/comm/anti_fraud/documents/rapport2_de.pdf) accessed 13.5.2002

OLAF activity report for the period June 2000-may 2001

It was this last aspect, that of resources the most important of which is personnel, which alarmed both the supervisory committee and those working for OLAF.<sup>93</sup> The Commission's attitude to the resources needed by OLAF was allegedly pretty negative. The refusal of the Commission to allow and to fund the appointment of appropriate personnel inevitably affected the standard of work done, and investigations made; it appeared to throw into doubt the Commission's real willingness to fully implement its own anti-corruption policy. It should be remembered that the responsibilities of OLAF had been expanded and yet it employed approximately the same number of staff as its predecessor.<sup>94</sup> This came in conjunction with the planned enlargement and the vast increase in the amount of work that will have to be done. According to the committee OLAF had a problem with legitimacy, transparency, and efficiency, not unlike its predecessor UCLAF.<sup>95</sup> Its independence, from the Commission and institutions it was supposed to be inspecting, was not clear<sup>96</sup>. Its investigations remained administrative and not judicial (meaning that judicial searches of property can only be carried out if the office requests member state participation), which was a weakness.<sup>97</sup>

The apparent reluctance of the Commission to provide staff or resources to OLAF was possibly because of OLAF's operational independence from the Commission and the potential threat OLAF posed to its staff's hard fought for immunity from scrutiny and prosecution. In fact the Commission struggled hard for the UCLAF staff to be taken over by the new organisation. Bearing in mind the following fact this makes some sense. Allegedly in the Commission, the person doing a task is important for the actual outcome finally achieved. Often staff are very independent in how they choose to run a case in every department of the Commission and UCLAF had been no exception with files allegedly run in a personalised sort of manner. In such a set up, who does a task will decide how the task is performed and what the contents of the result will be. Thus retaining the staff of UCLAF would have, in the Commission structure, probably meant that the work done by the new organisation may well have been remarkably similar to that done previously. Whatever formal rules and task requirements, unless the staff are changed at times in the Commission, reforms are likely not to happen or rather are likely to be resisted. The apparent refusal of the Commission to grant more staff until the UCLAF staff were taken over was seemingly an effective method of preventing the intended reform from being terribly effective. In fact as a potentially effective reform OLAF had its teeth drawn before it could really have much effect. A curious development considering the Commission's declared need for more staff to deal with inefficiencies and new financial probity requirements, and the fact that the normally financially reticent MSs were encouraging more staff to be recruited for OLAF.<sup>98</sup> And yet maybe this was probably part of the problem, the enthusiasm of the MSs and the EP for OLAF inevitably had a political feel about it and was therefore resisted as such.

The Commission had expressed intentions to change the staff regulations of those working for it so that they would be in line with the agreements made<sup>99</sup> to combat corruption, but their reluctance to really give OLAF the necessary resources to perform its tasks threw doubt on their other intentions. As to making Commissioners and others responsible for their actions and accountable, there the Commission made little progress. The problem of immunity for employees was only gradually properly addressed and one of the most important changes seemed

<sup>93</sup> Ibid and interviews with Commission Officials: OLAF

<sup>94</sup> OLAF supervisory Committee progress report July 1999-July 2000 section 1 p.10

<sup>95</sup> Ibid p.36

<sup>96</sup> Ibid p.18

<sup>97</sup> Ibid p.25

<sup>98</sup> Select Committee on European Scrutiny Fifth Report (2001) <http://www.parliament.the-stationery-office.co.uk/pa/cm200001/cmselect/cmeuleg/28-v/2802.htm> accessed 13.05.2002

<sup>99</sup> Communication from Mr. Kinno to the Commission; Raising concerns about wrong doing. 29.11.2000 SEC(2000)2078



somewhat confusing. The whistle blower rule which would allow an employee of the Commission to disclose a corrupt act should they discover one seemed at first glance to be a positive development until it became clear that OLAF or an internal department had to be informed first.<sup>100</sup> The employee had to allow OLAF a reasonable period of time before taking the matter further, the problem here was how long a “reasonable time” is.<sup>101</sup> It should be remembered that the Commission’s one whistle blower Mr Paul Van Buitenen (who was almost dismissed) commented that UCLAF, which OLAF resembled very closely, had been reluctant to respond to the requests made by other authorities for investigations.<sup>102</sup> He stated that they had failed to efficiently handle information, and due to under staffing and lack of independence from the Commission, had not been capable of handling a fraud investigation effectively.<sup>103</sup> He concluded by stating that OLAF would only succeed if it was truly and totally independent from the Commission.<sup>104</sup> OLAF’s independence remains a somewhat difficult subject; its director is independent but depends for his resources on the Commission.

A potential danger for the reforms and OLAF is that if they are considered to be too much of the EP’s and MS’s creature and part of an institutional struggle, then they will lose their legitimacy and be conceived of as alien and a threat. The primary role of OLAF is that of an independent monitor located within the machinery of the Commission administration. But as the EP was instrumental in the creation of UCLAF and in OLAF, both served and serve, in part, as the eyes and ears of the EP in the Commission, as well as fighting fraud, corruption and mismanagement. The EP conceives of an important part of its duties and responsibilities as being that of legislative scrutiny;<sup>105</sup> UCLAF/OLAF are a practical means for turning the theory of scrutiny into fact. One surprising development which throws some light on the motivations of the EP was an attempt by 80 MEPs to prevent OLAF from being allowed to investigate allegations within the EP.<sup>106</sup> The existence of such double standards or dubious motives was emphasised by one MEP who was quite candid about ‘the pot calling the kettle black.’<sup>107</sup> The Commission and the other institutions did not seem very serious about their avowed desire to reform themselves.

The apparent unwillingness of the Commission to accept the existence of OLAF as part of its internal structure, was shown in the Commission evaluation report on OLAF of 2003. It painted a gloomy picture.<sup>108</sup> Reading between the lines of the document it seemed to indicate that the Commission disliked the effect that OLAF was having on disciplinary measures and it had created a new disciplinary office; ‘the Investigation and Disciplinary Office (IDOC)’ in 2002<sup>109</sup> arguably to allow OLAF to concentrate on other issues. The Commission was apparently keen to stress that OLAF should only follow up issues which; ‘involve serious forms of economic and financial crime’ or matters which involved ‘criminal follow-up’, the emphasis

<sup>100</sup> See note 99 Communication from Mr. Kinnock to the Commission (2000) p.12

<sup>101</sup> *ibid*

<sup>102</sup> Letter from Mr Van Buitenen to the European Parliament; observations 15 and 22 <http://www.eurocom.org/eurocom/-report/uclaf.htm>

<sup>103</sup> *ibid*

<sup>104</sup> *ibid*; Conclusion

<sup>105</sup> See note 3 The Committee of Independent Experts First Report sections 5.3.2. ‘Probably because of the popular and media interest in “fraud”, it has been the European Union’s sole directly-elected institution, the European Parliament, which has consistently made the running on anti-fraud policy, above all in the form of its Committee on Budgetary Control. The latter body has pursued its often thankless task with a great deal of persistence, with the result that all the principal anti-fraud and control mechanisms currently in existence one way or another had their genesis in this Committee.

<sup>106</sup> OJ C 102/30 EN 8.4.2000

<sup>107</sup> Discussion with MEP 2002

<sup>108</sup> Commission Report, 02.04.2003. Evaluation of the activities of the European Anti-Fraud Office (OLAF). COM (2003)154 final

<sup>109</sup> *ibid* p. 21

was very much on the criminal element.<sup>110</sup> The regulation setting up OLAF however read somewhat differently; ‘investigating to that end serious matters relating to the discharge of professional duties such as to constitute a dereliction of the obligations of officials and other servants of the Communities liable to result in disciplinary, or as the case may be, criminal proceedings.’<sup>111</sup> The disciplinary element had been conveniently dropped in the Commission’s interpretation of the regulation. The Commission stated in the fourth paragraph that; ‘It is clear from the Commission decision and from administrative practice that IDOC exercises powers that are residual in relation to those of the Office, which avoids overlapping in administrative investigations.’<sup>112</sup> But immediately afterwards stressed in paragraph five; ‘to improve coordination and complementarity, the office (OLAF) must be asked to enhance the transparency of the limits to its action on the basis of various intervention criteria.’<sup>113</sup> Evidently the smoothness of co existence existing between the new organisation and OLAF that existed in paragraph four no longer existed in paragraph five. The Commission stressed in the document that it would like to see OLAF focusing on external fraud matters and one cannot but wonder whether this was to encourage it to commit overstretch and thus have to leave the internal issues more and more to the internal disciplinary office. It was also keen that OLAF become more involved in the other institutions of the EU. What appears important here is that given the almost doubling in serious disciplinary cases in six years, the Commission seemed to appear to want the evidently reasonably effective, independent OLAF to concentrate on external fraud and leave the internal policing of the Commission to the Commission itself, unless of course very serious financial crimes are involved. Granted that OLAF had only been in existence in its present form with the police-like powers over internal issues since 2000, the Commission’s acceptance of the need for OLAF, internally at least, appeared to be diminishing fast. That said OLAF’s numbers had gradually risen to the required number after a longer time than should have been the case.

Disciplinary Cases <sup>114</sup>

Date	Total of Cases	No Action Taken	Dismissal/ Action Taken
1994-1995	37	26	11
1996-1997	23	9	12
1998-1999	24	2	20
2000-2002	24	6	20

## 2.6 CONCLUSION

We have now considered OLAF, a relatively new and controversial organisation of the EU born out of traumatic and controversial circumstances. Before more OLAF related conclusions are provided it is useful to place the findings in the context of the theoretical model. OLAF finds itself well within the current cycle of defensiveness in the Commission as the latter’s reaction to OLAF shows. The reform that OLAF represented was accepted but apparently only allowed a limited impact, it appeared to be more for external audiences than for real effect. At the same time the Commission did seem to see in OLAF the possibility of mak-

<sup>110</sup> Commission Report, 02.04.2003.

<sup>111</sup> Regulation No 1073/1999 article 1 (3)

<sup>112</sup> See note 108 Commission Report, 02.04.2003

<sup>113</sup> *ibid*

<sup>114</sup> Figure obtained from Grey. S. Tackling Fraud and Mismanagement in the European Union. (2000) Centre for European reform working paper p. 18 and the figures provided by Chris Heaton Harris MEP in ‘Commission fails to crack down on staff law breakers,’ [http://www.mlx282.org/forum/index.php?art\\_no=146&act=v](http://www.mlx282.org/forum/index.php?art_no=146&act=v)



ing its officials more like a civil service and so removing some of the external influences and unhealthy link ups between industry, MSs and Commission officials. OLAF was useful for the Commission's bureaucratisation moves to appear less problematic and a threat. At the same time OLAF was liked by external EU actors the European Parliament and the MSs and was therefore suspect for the Commission at first (although OLAF was the result of Commission and EP involvement). They seemed to favour the possibility of increasing their controls over the Commission; OLAF representing another organisational actor there to make the Commission's working more transparent, democratically controllable. OLAF would also contain the really pathogenic behaviour which can break out in any organisation but in particular in one as loosely structured as the Commission can be, particularly when leadership is weak and a sense of mission lacking. OLAF seemed to have added to the general slow down in the Commission, particularly as Commission staff were made subject to increasing numbers of financial audits to prevent any OLAF investigation. The Commission was also quite capable of turning the threat into a benefit over time, above all by using OLAF in its own cycle of organisational bureaucratisation and then re-launch of the integratory mission. The OLAF staff who were really there to control corruption and fraud, in particular in the Commission, were to help launch new integratory moves like EUROJUST and the European Public Prosecutor. Furthermore OLAF staff were directed towards fraud investigations in the MSs.

Negative bureaucratisation remains an issue in the Commission and in the NMSs and none of the reforms undertaken to date are likely to have much impact on it. Arguably the whole structure of the Commission and the other institutions of the EU should have been radically reformed prior to the enlargement eastwards. Otherwise, the enlargement could have been delayed, or endangered altogether. Both the NMSs and the EU needed to ensure that proper accountability systems were in place, and that their bureaucrats were adequately organised and supervised to prevent abuses taking place.

Some of reform points were addressed by Mr. Kinnock in his white paper.<sup>115</sup> It contained proposals which, if fully implemented, would no doubt alleviate some of the problems. However, as stressed throughout this chapter, reforms have been begun, discussed and partially implemented before, only for the impetus to disappear once public attention wavers. The example of OLAF illustrates the unwillingness of the Commission and the other institutions to fully accept the implications of reports requiring reform. Any real radical reform necessary is and will probably remain elusive.

Regarding the OLAF reform and the intention to turn it into a brake on the worst bureaucratic abuses represented by corruption, the situation is quite apparent that the Commission and the other institutions are not very serious about their avowed desire to reform themselves. OLAF was not totally independent of the Commission and its investigative powers were still being discussed, its resources were not much better than UCLAF's. Oddly enough though, it is worth reiterating, the Commission was encouraging the NMSs to model agencies on the then current form of OLAF even though that was not very appropriate.

It should be apparent that the chosen solutions that the Commission has implemented are typical of its approach to the NMSs, unfortunately lacking in substance. Real change has to come by empowering employees and the public to expose and challenge corrupt behaviour.<sup>116</sup> The Commission is beginning to accept this, but only slowly and reluctantly. There are many parallels between the experiences of the Commission and the NMSs with regard to corruption and the attempts to contain it. Removal of barriers and unnecessary secrecy are a partial solu-

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<sup>115</sup> See note 23 Kinnock, N. Reforming the European Commission a white paper. 1.3.2000

<sup>116</sup> See note 99 Communication from Mr. Kinnock to the Commission; Raising concerns about wrong doing

tion to corruption. What is required is an end to the apparently cosmetic changes which answer the political needs of the moment but fail to address structural deficiencies and deep set attitudes. A fully functional OLAF, with proper resources will certainly assist in the creation of a zero tolerance environment for corruption, but unless the attitudes of the EU as a whole and Commission staff and Commissioners change, the problems will continue.

With regard to the NMSs, the approach the Commission followed in combating corruption has created a lot of antipathy. This raises the danger that measures forced on the states by the Commission will not be fully accepted and legitimised and therefore become the subject of renegotiation. An increase in 'paperwork', and bureaucratic controls and delays as a response to the present climate of suspicion relating to corruption and fraud will exacerbate the under-spending tendencies of the Commission to inefficiency, without having any real effect on corruption. In fact, if NMS administrations are not quickly helped and funded in their anti-corruption activities, an increase in corruption may well occur. Well targeted efficient investment in these countries' infrastructures is still essential to enable them to leave the to operate fully within the EU with effective police and judicial systems in place.

The most effective tool to fight corruption in the Commission as well as throughout the present EU and the enlarged version of the future, would be an independent investigative agency similar to OLAF. If fully resourced and granted full rights of search, and fully supported by other law enforcement agencies, such an agency would be able help defuse the politically divisive effect of corruption allegations. Such an agency would assist and not add pressure to already struggling governments. It could provide the capabilities and objectivity they lack.

Other reforms, which would help alleviate the problems of bureaucratisation in the Commission and in the NMSs, are the same as those implemented by many companies. The organisation structure has to be simplified, management should be by exception, and should set clear objectives, real promotion based on merit should be introduced. The layers of management should be reduced and effective flexible management brought in. Project management and financing, has to be totally overhauled. Channels of communication have to be simplified and clear lines of responsibility laid down, with real sanctions in the event of breaches of conduct and effectiveness. There should be clear goals and practical targets with performance benchmarks set to enable evaluation at all levels.

The reports on corruption and mismanagement in the Commission coincided with the same institution making high demands about the same problems to the NMSs, this could only damage its credibility, both amongst the NMSs and the MSs. The irony in the situation was noted by some authors. One author commented on the Commission's role in putting pressure on the Romanian authorities to remove a corrupt trust fund manager, considering its own record of corruption and nepotism. The author comments dryly that the pupils (applicant states) will be looking askance at their strict teacher the Commission, which has been constantly upbraiding them for similar faults. The article suggests that the applicant states will ask who has the greatest deficits, Brussels or themselves. In general, the article considered the effect that the resignation of the Santer Commission had had on attitudes within applicant states, which have implicitly been looking to the Commission as a strict model. Hypocrisy seemed to be the most appropriate word to describe the Commission's behaviour.<sup>117</sup>

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<sup>117</sup> Volker Wagener, Deutsche Welle 18.03.1999, Kommentar; Hochmut kommt vor dem fall.



**Dates of Interviews**

**OLAF Officials:**

Two officials interviewed between 1.12.2000 and 08.03. 2005

**DGXX Financial Control:**

Official: 28. 07. 2004

**European Parliament**

MEP 29. 07. 2004

MEP 11. 03. 2003

### **3. DG ENVIRONMENT (DG ENV) 1 COMMISSION ORGANIZATION FORMAL AND INFORMAL; INTEGRATIONARY DRIVE DYNAMICS, POLICY NETWORKS AND ENTREPRENEURIAL OFFICIALS**

#### **3.1 INTRODUCTION**

We have considered the OLAF and its relationship to the basic theory and also the problems that have been caused to the enlargement by Commission weakness and overreaction in the area of fraud and corruption. Now we will move on to look at a Commission department itself starting with DG ENV. We will first describe Commission structures as a whole when appropriate using the DG as an illustration. After the reader has become acclimatised to these we will move onto the more specific details of the environmental policy field and the DGs operations in this. The chapter will explore and examine the Commission at its more entrepreneurial moments from the perspective of a DG which has excelled in this regard.

Vast amounts of EU legislation has been generated in the environmental sector, around 80% of UK environmental legislation and 100% of that of Spain originated from the Commission as will be shown later. The question arises as to how a seemingly small Commission manages to generate such huge quantities of legislation for all the nations in the Union. This is particularly true when the vocal opposition of so many institutions and interest groups to Europe is considered. There would appear to be a need to try to account for some of the Commission activities which have resulted in this situation. The presence of legislative entrepreneurs in the Commission would be a useful notion in this respect. The thesis posits the notion of highly empowered, mission oriented officials fully representing the Commission, making connections and networks with MS officials and expanding the influence of the Commission and its legislation to a maximum. This will be seen to be the case in the DG and that this was very much in the interests of the Commission so long as it was expansive and dynamic.

DG ENV is an excellent example of the above phenomenon and it reveals several structural and personnel elements which encourage legislation generation. One group emerged from the investigations and interviews on which this chapter is based as particularly efficacious in furthering the legislative output of the DG, namely, that of Desk Officers and Heads of Unit, their tasks are discussed more closely later who operate in a legislative entrepreneurial manner.

In the Commission there is a unique combination of the political and the civil service spheres, and lawyers along with economists make up the majority of the officials, 36.6% were lawyers in the early nineties,<sup>1</sup> and over a third are economists.<sup>2</sup> The political and legal aspects of the work in the Commission attract adventurous individuals. The rapid expansion of the Union and the competencies of the Commission can be expected to owe a lot to the officials in-

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<sup>1</sup> Page, E. *The People who run Europe*. (1997) Oxford, Oxford University Press p. 78

<sup>2</sup> Interviews with Commission Officials: DG ENV



volved, but also to the type or organizational structure which often allowed them maximum discretion.<sup>3</sup>

The behaviour of technocrats has been observed to include the following characteristics, that the various units of the technocracy can be expected to place their concerns first and foremost, and they will have the tendency to finally over produce their own outputs.<sup>4</sup> The Commission, and the DGs, seem to be (a) technocratic institution(s) par excellence in which officials have enjoyed considerable discretion owing to their monopoly of knowledge in terms of the European dimension to policy making and individual policies. The Commission and the DG generated vast amounts of legislation which was at first desirable but finally seemed to have annoyed other sectors and politicians in some MS governments. This chapter will describe the positive aspects of DG legislative production and the next the negative.

## **3.2 COMMISSION STRUCTURE**

It is to be expected that the Commission structure will prove to have been useful in allowing its officials large amounts of freedom and empowering them with its legal-political nature to advance the integratory project and of course expand environmental protection.

### **3.2.1 THE COLLEGE OF COMMISSIONERS**

The Commission consists of two main elements, the College of the Commissioners which is considered to be the political layer and the services which means the DGs, Directorate Generals, the administration. Each DG covers a defined area of competence, usually sectoral; such as DG Competition, DG ENV, but occasionally DGs are set up to perform specific tasks. DG enlargement was created to ensure that the Community's decisions with regard to the enlargement were fully implemented. The basis of decision making within the College is by means of voting, as a collegial approach used to be favoured. This results in the rather curious situation that the President is very much, one amongst equals, and the Commissioner in charge of the budget equally so. Until recently the President had extremely limited means available to ensure that all the Commissioners acted in a responsible manner. In reality only the extremely political decisions and in particular those which the Commissioners have proven unable to solve amongst themselves arrived for the vote. Each Commissioner is assisted by a Cabinet who act as a bridge between the Commissioner and the services. Each Cabinet has a Chef, and there are regular meetings of Chefs of Cabinets to reach decisions on as many of the decisions which the DGs have not been able to reach themselves. Only after this stage are decisions then submitted to the Commissioners. DGs are often in conflict with each other since the DGs have to get legislation through the inter service deliberations for it to be officially adopted by the Commission as a whole. The majority of decisions are reached by what is known as the inter service consultation procedure, which is now done in a purely written manner. Here legislative proposals of one DG are put forwards to the others for discussion and, of course, amendment. Should the administrative process carried out by the DGs fail then the Commissioners' Cabinets take over.

### **3.2.2 COUNCIL AND MS OFFICIALS**

The services of the Commission have managed to become the EU legislative power centre partially since the Commission has the task of policy initiation. This power has been exploited

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<sup>3</sup> See theory chapter

<sup>4</sup> Poggi, G. *The state its nature development and prospects*. (1991) Palo Alto, Stanford University Press

and become inclusive in such a way that the MS staff working for the various ministries as well as the various committees of the Council have been described as the Commission's assistant bureaucracy.<sup>5</sup> This may seem rather puzzling until it is remembered that the Council and MS staff are actively involved in Commission proceedings and committees, thus putting them in the position of having to participate in the creation of legislation rather than simply in its rejection at the vote. In practice it means that the Council's legislative activity is largely supra national in flavour, as its staff have been wooed over to the Commission's side.<sup>6</sup> There can be many reasons for this, one is the sense that both groups of staff represent Europe more than their political masters, and that often they are the experts in a certain topic and not the politicians. Thus the civil service dislike of political masters combined with a sense of common purpose shared with Commission officials, can have the effect that the MS staff are more than content to go around the backs of their ministers with the connivance of Brussels,<sup>7</sup> or ministries in one sector are happy to pursue a sectoral policy at the expense of another sector. The MSs are literally divided up and ruled by the Commission and the process of dividing and ruling runs right through the Council. MS staff are divided into their sectors and ministries and often fail to correspond adequately with their central government masters, the MSs themselves are often divided by their different governments' political preferences which can via the backdrop of future QMV be played against each other. Whilst it is true that the Commission also has difficulties adopting a common position with its various sectoral DGs, the MSs have a harder position. Thus in reality the main legislature of the Union can be argued to be the Commission, it is the 'major EU legislator'<sup>8</sup> with the Council of Ministers rapidly losing what sovereignty and power over legislation that it ever had.

### 3.2.3 THE SERVICES

Having considered the Union as a whole and the Commission's position within it, an outline of the basic structure of a Directorate General is required. Each DG is headed by a Commissioner who is chosen usually by MSs with the EP's approval. He or she leads the DG as its political head and is supported by a Cabinet whose members are appointed by the Commissioner involved, usually for a five year period. The members of the Cabinet are either chosen externally or from the ranks of the officials in the Commission. The administration is managed by a Director General, (grade A1-A2) who is responsible for the day to day work. They are also considered to be political appointees,<sup>9</sup> and up until recently these individuals often ran the same DG for many years. Under recent reforms this has been altered, with the mobility being required by President Prodi Director Generals have to move from their present positions after seven years. The Director General is supported by either/and a deputy Director General and around five Directors (A2-A3) who are responsible for the Directorates which have to consist of at least two units to justify a Director. Staff members often consider Directors to be there to represent the units they manage and to fight for them politically with other DGs and with the MSs. The units are the real legislative engine in the DG and have Heads of Unit who are usually experienced officials of A4 grade who are not normally directly chosen by politicians. The rest of the policy making officials are A5-A7 grade staff called Desk Officers who are usually of international origin and full time officials very often lawyers or economists and motivated Europeanization supporters. Seconded officials from the MSs and MS experts and other experts advise and assist the Commission officials in the drawing up of legislation, usually for a three year period. Some sources state that these officials are also placed within the system by MSs to ensure that their views are respected, and that they are

<sup>5</sup> Van Schendelen, R. *Machiavelli in Brussels third edition* (2003) Amsterdam, Amsterdam University Press p.66

<sup>6</sup> Shore, C. *Building Europe: The Cultural Politics of European Integration*, (2000) London, Routledge p.218-219

<sup>7</sup> *ibid* p.18-219

<sup>8</sup> See note 5. Van Schendelen (2003) p.64

<sup>9</sup> *ibid*. p.52



fully informed of all prospective legislation. B grade staff are the basic clerical staff and are usually Belgian or Italian.

The main criterion for recruitment into the Commission was originally that the applicant was a civil servant. In Germany and other continental countries, most higher level civil servants are lawyers, and this is true of the Germans working in the Commission, in the UK, however, a legal education is not as highly valued as a generalist humanities one and thus the UK civil servants in the Commission reflect this national perspective in their backgrounds. Desk Officers are normally full time permanent officials but in DG ENV seconded officials are an important part of the staff. The officials like to make a distinction between individuals with a legal education and those who are by nature lawyers, the latter are seen as more conservative and usually found in the Commission's legal services. Whilst it is reasonable to expect mostly lawyers to be involved in legislative generation, and economists in cost benefit studies etc, it is clear that officials without a legal education have acted in a pioneering manner for DGs, usually where institutional growth is concerned and it is quite possible in the Commission to be involved in working out policies and not be a lawyer.

The majority of legislative proposals are put forward to the DG by NGOs and other stakeholders, lobbyists, MSs, and the EP;<sup>10</sup> the administration decides what proposals are pursued and developed into policies, often the choice is down to the Heads of Unit or the Desk Officers themselves.<sup>11</sup> According to one source over 80% of the final proposal adopted by the Council is the same as that prepared by the Desk Officer supervising the directive.<sup>12</sup> The same source stressed the fact that the Desk Officer is alone in the initial process of developing the proposal.<sup>13</sup> Formally before any proposal can be pursued for possible inter-service (between DGs) discussion it has to be approved by the DG management. Finally the Cabinet and the Commissioner have to agree with the legislation put forward by the administration.

### **3.3 THE INFORMAL STRUCTURES OF THE EU WHICH ENCOURAGE LEGAL ENTREPRENEURS**

#### **3.3.1 ORGANISATIONAL MENTALITY**

Having considered the formal structures of the Union and the Commission the grass roots reality in fact promotes an entrepreneurial spirit. The informal structure of the Union is constantly evolving and has proven to be very open to officials to mould. It implicitly encourages and creates a very distinctive culture. In part this is due to the origins of the Commission itself. The Commission has since its inception enjoyed an entrepreneurial, almost pressure group like mentality. In its first few years it was a flexible, highly active organisation like a partisan band, which took every opportunity to expand its competences and to move into other sectors.<sup>14</sup> After the Single European Act, the same dynamic sense of enterprise drove the Commission towards the single market, the Maastricht treaty and the enlargements. The individuals which it attracted at the beginning were European enthusiasts who were willing to accept the unique approach of the institution; ' . . . In this it behaves less like a normal interna-

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<sup>10</sup> Mazey, S and Richardson, J. *The Commission and the Lobby* in Edwards G (ed) *The European Commission*, (1997) Cartermill, London. p.179

<sup>11</sup> Interviews with Commission Officials: DG ENV

<sup>12</sup> Grant, W, Mathews, D, Newell, P, *The effectiveness of EU Environmental Policy* (2000) Basingstoke, Macmillan Press. p.19

<sup>13</sup> *ibid*

<sup>14</sup> Coombes, D. *Politics and Bureaucracy in the European Communities* (1970) London, Allen and Unwin p.259

tional secretariat and far more like a promotional group, or even a political party with a firmly rooted ideology.<sup>15</sup> According to one source this remains the case even after the significant time lapse that has occurred; ‘ . . . My research found evidence of a strong sense of Community and esprit de corps among staff-even among new recruits . . . all of which suggest a highly developed sense of solidarity and consciousness of kind.’<sup>1617</sup>

### 3.3.2 IRREGULAR PRACTICES

MSs have used their power of patronage and appointment to great effect in their choice of Commissioner and often top civil servants within the Commission, despite the latter’s supposed independence. Certain DGs are ‘flagged’ as belonging to certain nationalities.<sup>18</sup> It has been stated that the senior ranks in the Commission’s DGs are chosen and ‘parachuted’ into their positions by MSs who desire to place their man or woman in a position where they will be able to affect policy outcomes. Openly MSs claim that their use of parachuting is so that candidates have a certain political status because they have an important promotional role to play vis-à-vis the MS ministerial level and politicians. In fact the Commission is far from a water tight independent institution:

“ . . . a number of dysfunctional practices have become virtually institutionalised, from nepotism (‘piston’), and ‘parachuting’ staff at the top to ‘rigged exams’ and back door recruitment methods . . . ‘National quotas and balance, parachutage,<sup>19</sup> sousmarins,<sup>20</sup> Cabinets, piston,<sup>21</sup> seconded national experts, posts reserved for certain nationalities etc are all signs of disintegrative seeds lurking in the fruit of apparent integration.’”<sup>22</sup>

### 3.3.3 CABINETS AND DIRECTOR GENERALS

The Commission expects the College of Commissioners and the Commissioner directly concerned to set general policy direction, whilst policy is developed by Desk Officers. The Commissioners appoint Cabinets of their own choosing and there can be conflicts between Commissioners and their Cabinets and the administrative management of the DGs. In the Commission there are struggles between the Cabinets and the Director Generals, with successive Presidents attempting to finalise a working arrangement with the Cabinets playing a lesser role. In some DGs the Director Generals issue bans on staff being approached by Cabinet members and vice versa although this usually occurs to accelerate policy making decisions. Every communication between the Cabinet and the administration has to pass over the Director General’s desk, whilst this improves the management’s control over their staff, it can also be counter productive. It leads to the odd situation of individuals working in the same building, officially at least, having to pass paper slowly up through the hierarchy rather than knocking on a door two storeys up, which is far from efficient.

### 3.3.4 DOSSIER NETWORKS

The plethora of committees, lobbyists, MS officials and of course the Commission officials, operate in a policy arena that is both opaque and in flux and so offers huge scope for entre-

<sup>15</sup> See note 14 Coombes D (1970) . p.89

<sup>16</sup> See note 6 Shore (2000) p.132

<sup>17</sup> *ibid* p.140 quoting Virginia Willis (1982:4)

<sup>18</sup> See note 1 Page (1997) p.51; 52

<sup>19</sup> The placing of individuals in the top ranks of the Commission who have often not followed the usual path through the hierarchy.

<sup>20</sup> A method of avoiding the common entrance examination.

<sup>21</sup> Use of influential contacts to achieve certain goals

<sup>22</sup> See note 6 Shore (2000) p.197



preneurialism and even encourages it. The Commission official has a large amount of discretion when drawing up legislation and there are few procedures and set administrative ways of doing things to guide the Desk Officer as they decide on the framework and contents of policies. Gathering a large network of officials in various European institutions is inevitable during the life time of a dossier (policy file) and if one institution creates obstacles then appeals can be made to one of its competitors. European institutions are divided both along national as well as sectoral lines and there is little integration between the sectors and between the senior management and politicians in the various institutions. The existence of these multiple divisions can result in a situation in which the lines of responsibility and accountability are confused, potentially contradictory policy is developed in different sectors which compete rather than cooperate. For the entrepreneur the situation is ripe for devising complex individual solutions which might well not be those which any given hierarchy or political leadership would have agreed to.

Also beneficial for the entrepreneur was the weakness in the necessary clerical infrastructure, or clerical layer to allow enforcement of standardization. Apparently there was a vacuum in the DG when it came down to basic bureaucratic tasks and standardisation. The archives in the DG were apparently either chaotic or problematic. This absence of standardisation was continued in the files themselves, which were apparently constructed according to the methods favoured by the Desk Officer in charge. Their own highly personalised methods may well not be those of the individual inheriting the policy nor of the next person. A policy dossier will therefore often consist of several different methods of organisation and chaos can be expected to be not far away. Apparently there was no planned method for handing over a dossier to the next officer and this could result in long delays, if, of course, there was much of a dossier organisation at this point. Part of this is linked to the organisation's need to expand and advance, the notion that an old document is irrelevant and can be forgotten seemed to be held by the Commission.

### **3.3.5 UNDERSTAFFING AND OFFICIALS' DISCRETION**

The understaffing of the Commission, means that often there have been huge amounts of potential work and too few to perform it and manage it. According to one source, officials in DG ENV there used to be more than enough possible policy regulations to be made, and low staff numbers was the issue. The levels of understaffing allow the officials some element of discretion in which dossier they choose to follow and how. Heads of Unit have been known to decide to make a new policy and to see it become law on all the MSs' law books.<sup>23</sup> Sometimes the lack of real management direction adds to the above to allow the official a unique amount of discretion in which dossier they choose to follow, although key dossiers will be allocated to certain units. There are statements made by officials that dossiers can be chosen or not by themselves and that it is possible for officials to simply decide to create a dossier even where none existed before.

### **3.3.6 EXCESSIVE BUREAUCRACY AND NETWORKS**

Quite apart from the above, whilst the DG and the Commission are said to follow the French bureaucratic structural style, which is very hierarchical with every one checking everything, in practice, during Commission dynamic phases, these are routinely avoided, '... rules and procedures are rarely broken but are constantly distorted, manipulated and ignored ...'<sup>24</sup> and again, "the annoying habit of people using national and party links to circumvent the sys-

<sup>23</sup> Interviews with Commission Officials: DG ENV

<sup>24</sup> See note 6 Shore (2000). p.181 quoting Mole (1992:19)

tem.”<sup>25</sup> In larger DGs with longer traditions there are considered to be so many checks and balances built into them that it is almost impossible to follow a formal route. In fact the Commission is known to be full of networks, ‘If you’re not catholic, socialist, or from the right class it is difficult to make your way here. By class I mean the system of networks . . . Under Delors the French got all the best jobs . . . Before Delors came it was the Italian lobby which held the reins of power . . . Then the French replaced the Italians . . .’<sup>26</sup> and again, ‘This pattern of cultivating personal networks within the organisation by planting trusted supporters in key positions was extended even further during the Delors era . . . These positions placed one in an ideal position to cultivate “friends in high places” which was widely acknowledged as the “way to get ahead” in the house . . .’<sup>27</sup> Some officials have been baffled as to why certain individuals are promoted and as to why certain decisions are taken, it is more than likely that one of the many networks provides the answer. For the entrepreneur with social skills, the Commission’s informal administrative system would appear to be ideal ground for pursuing policy interests; ‘The evidence from my research suggests that the ‘informal’ system based on pragmatic codes and norms is the effective system of administration.’<sup>28</sup>

The presence of Epistemic Communities or Policy networks in the DG seems to be fairly clear as the following quotations from the literature demonstrate:

‘The environmental DG has close contacts with various organisations lobbying for the protection of the environment. It “is often depicted as a green colony” or even as being composed of “ecological freaks”. In seeking to impose restrictions on trading or industrial activities in the name of environmental protection it finds itself confronting the very views of the DGs for trade, and for internal market and industry. Similar problems have arisen in relation to the environmental impact of agriculture. In a number of areas, including, for example, the proposals developed in the early 1990s for a carbon tax to restrain energy use and restrict its contribution to global warming; “its proposals are often watered down in negotiations with other DGs.”’<sup>29</sup>

“ . . . sometimes officials may even have the opportunity to develop their own policies: for example, ‘when the DG concerned finds itself stepping in to fill a policy vacuum’ . . . similarly, European Union environmental policy, which was formulated and codified into a large body of regulations in the 1980s, was for a long time the concern of a group of committed officials who gave their Directorate General the reputation of being ‘dominated by . . . ecological freaks’”<sup>30</sup>

‘ . . . officials have over the years gradually acquired for themselves a de facto policy role often supported by attendant interest groups and so called “epistemic communities” of experts. Thus, a considerable corpus of environmental law was developed without a strong Treaty base and finally legitimised in the SEA in 1986 . . . Only now, perhaps, do MSs realise the huge implementation costs of such environmental policies. . . . An effective advocacy coalition of Commission officials, the international scientific community, and a vociferous and skilful environmental movement acting as a “megaphone for science” made the running . . .’<sup>31</sup>

<sup>25</sup> See note 6 Shore (2000). p.187

<sup>26</sup> *ibid* p.198

<sup>27</sup> *ibid* p.180

<sup>28</sup> *ibid* p.214

<sup>29</sup> Stevens, A and Stevens, H. *Brussels Bureaucrats?* (2001) Basingstoke, Palgrave p.200-201

<sup>30</sup> *ibid* p.140

<sup>31</sup> See note 10 Mazey; Richardson (1997) p.184



There are stated to be plenty of rather loose messy Policy Networks in the environmental field.<sup>32</sup> Since MS officials, environment ministers and MEPs seem to be actively involved in the promotion of environmental legislation even when the DG top management were against, and also national treasuries Policy Network seems the appropriate description. Certainly such a network would explain the success the DG has had at developing a sectoral area and associated legislation for which there was little real treaty base.<sup>33</sup> These points will be discussed in the next chapter.

### 3.3.7 LEGISLATION GENERATION AS A PERFORMANCE BENCHMARK

In the Commission the DGs which are responsible for the core Community freedoms are relatively secure. The other DGs like DG ENV have a less secure position and have therefore generated significant amounts of legislation to seemingly justify their continued existence, since for the Commission efficiency is apparently measured in legislation produced as this is traditionally how the Commission seems to have considered its existence to be justified. It should be stressed that whilst a DG justifies its existence on the strength of its legislative record,<sup>34</sup> staff are not allocated according to results but rather to requests.<sup>35</sup> Proposed legislation is submitted to the College of Commissioners with a suggested number of required staff attached to it.<sup>36</sup> In such an environment it is understandable that the DG will, for institutional survival, strive to get as much legislation accepted as possible. If it is considered to be appropriate and have a good chance of being passed by the Council and the EP, the College will accept the proposal. Considering the record of steadily increasing staff figures from the few of the early seventies to the 500 odd now, combined with the vast amount of environmental legislation that the DG has produced, there would appear to be a clear enough correlation between staff figures and legislation. But there is often a major delay in the allocation of staff and the DG has complained about being understaffed from 1980 onwards.<sup>37</sup> Given that the DG is understaffed, a common enough complaint in the Commission as a whole, it might appear odd that it still apparently takes every opportunity to create more work for its already overworked staff. The answer lies in the Commission's internal measurement of success which leaves the DG in a vicious circle, to survive it must be entrepreneurial and propose new legislation, but the staff increments are never enough or on time, leaving the staff working even harder and maybe subsequently producing legislation which could be improved. Which of course raises the risk that implementation will get worse. Many legal writers consider the legal basis of much of the initial legislation to have been relatively weak.<sup>38</sup> Given that this is the case, it is remarkable how the amount of European environmental legislation soared. The complaints procedure of the DG, which will be discussed later, backed up by the legal department have proven to be extremely effective at winning the cases which are brought before the Court of Justice (ECJ), despite the weak legal base. Either the opposition have been badly briefed or the creative approach to generating legislation on the environment found in the DG is founded on excellent legal arguments.

<sup>32</sup>Peterson, J and Bomberg, E. (1999), *Decision making in the European Union*, New York, St, Martin's Press p.192,193

<sup>33</sup> Edwards, G and Spence, D. *The Commission in Perspective* in Edwards G (ed) *The European Commission*, (1997) Cartermill, London p.19

<sup>34</sup> Interviews with Commission Officials: DG ENV

<sup>35</sup> *ibid*

<sup>36</sup> *ibid*

<sup>37</sup> COM (80)222 final

<sup>38</sup>Ziegler, A.R., *Trade and Environmental Law in the European Community*, Oxford, Clarendon Press (1996) p.138

### 3.4 MAIN ACTORS: DESK OFFICERS AND HEADS OF UNIT

#### 3.4.1 DELORS AND THE DESK OFFICER

The Desk Officers and the administration can be said to be expected to play a political role and usually to take the initiative. This observation is confirmed by the statement of Jacques Delors when he said that Commission officials had six professions: to be a law maker, to innovate (generate policy proposals), to control respect for Community decisions, to negotiate with the different actors involved in the Community process and to be a diplomat.<sup>39</sup> Rarely are national civil servants called on to perform such a combination of tasks, the use of the word 'law maker' by Delors rather than any other phrase appears to place the Desk Officers on a par with legislators and emphasises that their work is political as well as bureaucratic. As one senior official put it, officials are paid to be 'creative'<sup>40</sup> and by this he meant to find ways of promoting their dossier and getting around organisational, managerial blockages.

The tough nature of the competition to enter the Commission encourages only the most intelligent and dynamic individuals with a legal or economic background to enter the institution. However, this sense of elitism is compounded by a further twist insofar as even after successful applicants have passed the competition their names are then simply on file. A position within the Commission is dependent on the individual approaching a DG and getting themselves known, noticed and finally requested. Thus initiative, social networking skills and where possible political connections and determination are required from the start. The applicant is in effect alone even before starting their career. This sense of being alone and solely responsible for yourself, your success, and that of your dossier permeates the whole Commission. As indicated above promotion is considered by officials to be, once more, down to the official acting informally. The formal method of achieving promotion did not seem to be considered by many officials to really matter. You have to network, get onto Cabinets, ensure that you are noticed, i.e. sell yourself and your dossier. They can choose to get themselves known, to make contacts to the Cabinet and higher management. The absence of a more effective career structure forced officials to be self contained and dynamic, to show entrepreneurial qualities in effect. The combination of a sense of elitism and the tough selection procedure promoted a certain mentality and perception of their profession:

'Many Commission fonctionnaires clearly do not see themselves as public servants or mere administrators . . . many preferred to see themselves in grander political terms as "policy-makers", "innovators", "intellectuals", "architects" of the new European order whom the treaties (and "history" itself) had proclaimed "custodians of the European interest."'<sup>41</sup>

Thus a specific type of individual has traditionally been attracted to work at the Commission and this type can be defined as being both motivated, political and would probably in a free market setting be considered entrepreneurial-like.

The process of adopting legislation can be very complex and chaotic, and the Desk Officers who are alone responsible for the dossier they have either chosen or been allocated were expected to promote and follow the dossier without any real support. The effective culture was one of backwoodsmanship with a lone official having to reach decisions often of a political

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<sup>39</sup>Spence, D. *Staff and Personnel policy in the Commission* in Edwards G (ed) *The European Commission*, (1997) Cartermill, London p.95

<sup>40</sup> Interviews with Commission Officials: DG ENV

<sup>41</sup> See note 6 Shore (2000) p. 144-145



nature and then interacting with MSs, MEPs, lobbyists and forming networks to achieve the adoption of their dossier. The absence of any real formal procedure to follow let alone a standard filing system for support, or the firm guidance of superiors meant that the official had to be a decision maker and that often their attitude was decisive in how a dossier was followed. The confusion of principals meant often the absence of effective checks and balances an example of which is the following; environment ministers were said to often vote yes for legislation when their national treasury departments would have rejected it out right, usually treasuries will notice later on but sometimes not and often it is too late. If the official can market his or her dossier effectively to the environmental ministers, who are often loyal to their sector, then national parliaments and governments can be avoided.<sup>42</sup>

There can be said to be a general culture of competition in the Commission which has probably been increased with the difficulties in getting legislation passed. It is common enough to hear about competition occurring within DGs, between DGs and their sectors, between the political layers and the administrative, between units, between Directorates etc. This culture necessarily affects the officials and can accentuate their isolation and reduce the number of natural allies that could have been expected from the formal structure of the Commission. However it also breaks down the rigidity of the structures as the DGs and Commission divide up into competing elements, and thus opened up possibilities for the official

Usually the officials are the absolute experts, often in the whole of Europe, of the complete dossier. The Commissioner and their supporting Cabinet can only have the very broadest of ideas about the contents of the directives. According to some sources, a high proportion of the management from Heads of Unit to Director Generals are often not experts,<sup>43</sup> and the higher their rank the more likely it is that they owe their position to factors other than ability<sup>44</sup> and knowledge. Desk Officers are often guided by MS experts on the committees which are related to their dossiers and a close detailed knowledge network can evolve around a dossier with the Desk Officer managing it. That said, the initiative remains with the official and not the MS committee. For the directive on hazardous waste, apparently the technical adoption committee only met twice a year. Although such committees meet for one issue they can be asked to vote on more issues as well, which can leave scope for officials' discretion. This expertise means that the possibly less expert and possibly politically chosen and motivated DG hierarchy are dependent on the officials to generate the legislation necessary for them to survive as an institution. Obviously an amount of discretion is at the disposal of the official concerned and it is also to be expected that a degree of loyalty to the dossier and the networks concerned will also develop, potentially at the expense of loyalty to a distant DG hierarchy. Given the many splits and principals the official has to overcome in the DG, the Commission and the rest of the institutions, their expertise has to be used carefully to win arguments often of a legal nature in order to complete their dossier.

Without networking an official will not be able to complete their dossier and this takes time. They are expected to overcome the many splits mentioned above and to forge compromises, whilst the actors the Commission would expect the official to have to overcome, would be limited to the MEPs, the lobbyists and the MSs, in practice the skills are very relevant within the Commission itself and of course the DG. The Desk Officers are at the centre of a network of actors coalescing around the directive which is beginning to be formulated.<sup>45</sup> It takes 9 months for a member of staff to become operational with a dossier, so short term trainees are

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<sup>42</sup> Interviews with Commission Officials: DG ENV

<sup>43</sup> *ibid*

<sup>44</sup> *ibid* and see note 39 Spence (1997) p.75

<sup>45</sup> See note 10 Mazey; Richardson (1997) p.179

not even put on them. A dossier's life can vary, mining waste was very quick, another took eight years, 4-5 years is a good average.<sup>46</sup> The Desk Officer is alone in the initial process of developing the proposal.<sup>47</sup> It is only once the policy has been adopted internally by the DG and adopted by the College that the official can be said to have been provided with full policy direction.<sup>48</sup> The Desk Officers apparently initially decide policy direction maybe with their Heads of Unit,<sup>49</sup> the DG hierarchy and the College sometimes provided reactive policy direction.

In order to succeed, officials, the DG and Commission must be able to be extremely sensitive of the changing policy environment. They must, in economic terms, be very much up to date on the present market situation; they must know what products can succeed and what not. Application of SWOT, strengths, weaknesses, opportunities and threats, is a basic to companies in the market and a form of this is necessary for officials to follow. They must recognise the opportunities and the strengths of the Commission position, and its product, at any given time, and of course the weaknesses and threats. The basic Commission product is legislation in its various forms and in particular legislation that enhances the Commission's competencies. Usually there will be the threat of MS opposition, other DG opposition and of course lobbies and the EP. However in the event of an industrial accident then it is suddenly easier to get environmental legislation passed, or in the event of a rise in unemployment then suddenly other DGs will find themselves in a position to rapidly generate legislation to exploit the opportunity. Unavoidable facts, media attention and public opinion are suddenly in the equation. The reason for this is quite simple the MSs and the EP will do all they can to avoid being seen to oppose obviously beneficial legislation at times of change and crisis. Officials have to possess this entrepreneurial sensitivity to recognise the perfect moment to either reintroduce legislation previously put on the backburner due to opposition, or to quickly generate new legislation before the political agenda moves on. Not only dramatic events and trends decide the time to re-launch legislation, if the EP committee concerned with the sector is more favourable owing to a change in its membership, then this is a favourable opportunity to be exploited, or if an unfavourable hierarchy changes an opportunity is there.<sup>50</sup> Or if the balance of environmentally active MSs in the Council changes this is a moment to act, or if a MS decides to promote a certain policy domestically, then the Commission can suggest the benefits of a European approach, which would of course have the same domestic effects. The official has to remain 'on the ball' at all times, keeping in with his networks and ready to act.

### 3.5 ENTREPRENEURIAL TACTICS IN THE COMMISSION

#### 3.5.1 THE ADOPTION OF A LEGISLATIVE PROPOSAL

When an official decides to work on a piece of legislation, and to act as an entrepreneur, he or she will face many opponents both legal and otherwise. The first struggle is for the legislation proposal and draft to be adopted by the administrative management of the DG. It is not uncommon for the official to have to sell their dossier to the hierarchy and the Cabinet.<sup>51</sup> When the request for a dossier comes from the Cabinet it is possible for the DG hierarchy to oppose it and the official may have to sell his dossier to them.<sup>52</sup> The same can happen if the hierarchy

<sup>46</sup> Interviews with Commission Officials: DG ENV

<sup>47</sup> See note 12 Grant; Mathews; Newell (2000) p.19

<sup>48</sup> See note 10 Mazey; Richardson (1997) p.112; p.120

<sup>49</sup> *ibid*

<sup>50</sup> Interviews with Commission Officials: DG ENV

<sup>51</sup> *ibid*

<sup>52</sup> *ibid*



request a dossier and the Cabinet oppose it, again selling is on the cards. Given that political motivations seemingly become steadily more important the higher in the hierarchy, it is not particularly odd to find that the official can often feel rather alone and having to hunt for allies amongst the management in order to see their dossier through to fruition. A degree of political and diplomatic ability and salesmanship are necessary for the dossier to be adopted by the DG.

### 3.5.2 THE ROLE OF DIRECTORS AND COMMISSIONER

As the DG will only adopt a certain amount of dossiers, competition can often occur between different Directors, units, dossiers and their officials. It can be extremely difficult to successfully compete at this stage and a lot can depend on the official's Director who has to sell the official's dossier.<sup>53</sup> The other Directors will naturally promote the drafts prepared by their units and only a limited number of drafts will be passed on to the next level, thus the political ability of an official's Director may prove to be decisive, combined with the carefully created legislative product and the sales angle provided by the official. The arguments which are made at this point are both of an economic nature and presented by the DG's economic officials and legal from the lawyers.<sup>54</sup> Often a draft will be required to carry out a cost benefit study before it is allowed to be considered at this stage.<sup>55</sup> The next stage involves persuading the political level of the Cabinet and the Commissioner that the draft is worth sponsoring. Since 1992 and the less but better legislation drive, the Commissioner is most likely to back a proposal that: has a good legal coherence and content, makes economic sense but also which is likely to have powerful political supporters to give it a guarantee of success.<sup>56</sup> The legal unit of the DG may well have a say on the proposed legislation, although their task mostly involves taking legal steps against MSs.

### 3.5.3 ECONOMISTS AND LAWYERS

The problems between the economists and the lawyers in the DG and the Commission as a whole emerge at this point. The two professions seemed to find communication problematic and the style of argument in particular.<sup>57</sup> Lawyers find it easier to argue legally than economically and a draft which may make excellent legal sense may well fail to stand up to the scrutiny of the economists.<sup>58</sup> The problem is similar to that in the market where businessmen find red tape frustrating and often nonsensical, ironically in the DGs it is often the lawyers that perceive the economists as the bringers of red tape stopping their legitimate entrepreneurial legislation production.<sup>59</sup> Recently the position of the economists and financial experts has been strengthened in the Commission as a whole.

## 3.6 CIRCUMNAVIGATION OF VARIOUS OPPONENTS AND THE HIERARCHY (*See Figure 1*)

In the event that the official faces opposition from their Head of Unit, they are apparently able to attempt to circumnavigate their Head of Unit and to get the proposal sponsored by the upper levels in the hierarchy. It is a curious fact that in many DGs whilst a Head of Unit is

<sup>53</sup> Interviews with Commission Officials: DG ENV

<sup>54</sup> *ibid*

<sup>55</sup> *ibid*

<sup>56</sup> *ibid*

<sup>57</sup> *ibid*

<sup>58</sup> *ibid*

<sup>59</sup> *ibid*

above the official in the hierarchy, the official is responsible to a Director.<sup>60</sup> If an official wants a directive to be passed which is likely to be opposed by senior management sometimes their own Director, or the other Directors, then apparently a useful method of avoiding management opposition is to get Cabinet involvement in the dossier and thus that of the Commissioner too.<sup>61</sup> Cabinets have sought direct contacts with the officials to avoid the sometimes slow hierarchy, officials, logically enough, will also try and attract Cabinet attention if possible.<sup>62</sup> It is apparently for this reason that some heads of DG management, the Director Generals seek to forbid and prevent any contact between officials and the Cabinet, regardless of whether this would be more efficient.<sup>63</sup> Even so, Director Generals seemingly will bypass their own administrative management to get policies enforced and so speed up the system and can also prove to be a useful ally in dealing with lower management.<sup>64</sup>

Even if a dossier is not directly wanted by the Commissioner and or the management, so long as the proposal has strong sponsors like the EP or a MS then seemingly a certain amount of pressure can be brought to bear.<sup>65</sup> In the event of opposition from the higher management then apparently the official can go around the hierarchy to the EP and the Commissioner or the MS's ministers concerned. This is what is said to have happened with the regulation on electronic waste, the environment ministers from the MSs were highly supportive of it, and the officials had to sidestep the more industry friendly Commission, which was, in this respect, a problem that had to be circumvented.<sup>66</sup> This is a useful tool to force a directive past internal blockages, and the traditionally environmentally friendly Committee of the Environment of the EP, can usually also be counted on to apply pressure where necessary. Some MS environmental ministries like EU legislation which costs them less and is easier to get into their countries' law books.

Whilst MSs can be useful in overcoming management difficulties, the official has to deal with the MSs which have their own methods and tactics of attempting to harness the entrepreneurial spirit of the Commission. The MS lawyers and officials can apply their pressure in the committee stages of the dossier, as the official concerned is gathering information, or they can parachute another official, manager, an END (Seconded National Official), into the DG to run a dossier.<sup>67</sup> As the MSs are not a block but rather a group of independent actors, the official potentially has the advantage of being able to appeal to different MSs for knowledge and support. MS lawyers and officials in the Council, and the same applies to the MEPs and any of the other institutions officials involved, all have a chance to press for amendments and changes and the DG official will have to answer questions and challenges from them.

The next opponents that the official will face are in the so called inter-institutional stage. Now other DGs can apply pressure for changes and delay the passage of the dossier. It used to be the case that two months was a realistic period for the DG to wait before its dossier reached the final Commission agreement stage on adoption, now that time is more like twelve months, which reflects, no doubt the increased competition mentioned earlier. It is not unknown for other DGs to notify lobby groups about another DG's dossier and to thus encourage them to protest to the lobby sensitive, College of Commissioners and the Heads of Cabinet and as a result dossiers may well be altered. The official will have to defend their dossier from legal

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<sup>60</sup> Interviews with Commission Officials: DG ENV

<sup>61</sup> *ibid*

<sup>62</sup> *ibid*

<sup>63</sup> *ibid*

<sup>64</sup> *ibid*

<sup>65</sup> *ibid*

<sup>66</sup> *ibid*

<sup>67</sup> *ibid*



challenges from other DGs representing industry or transport, and of course the lawyers of the lobbyists. The economists of the other DGs will also closely scrutinize the text. The final decision on adoption will be taken by the College or the Chefs of Cabinet after compromises have been made, sometimes quite serious compromises, e.g. According to one source the official who drew up the proposal for environmental liability policy, saw his text watered down after industry lobbied the Commission at the various stages, the directive had called for strict liability and this was changed to fault based liability.<sup>68</sup> Two exemptions were added which toned down the legally enforceable implementation text, which apparently turned the strict liability to a negligence only liability. The Chefs of Cabinet changed the text even further, weakening it from the standpoint of the original draft.<sup>69</sup> The legal service of the Commission will have to approve a law and this can be a stage at which the lawyers test their skills. The legal service lawyers are said to often be conservative in their decisions, particularly since they must be sure that they will be able to win any ECJ cases which may well result.<sup>70</sup> But also they tend to concentrate on the Treaty and the four basic freedoms which can be both a benefit and a curse for DG ENV. On the one hand, sometimes the lawyers of the legal service accept that they are not environmental law specialists and allow legislation to proceed if the DG explains its case.<sup>71</sup> On the other hand if the basic freedoms are in any way challenged then there is said to be tendency for them to be conservative.<sup>72</sup> The last hurdle can be reasonably said to involve the ECJ and its lawyers. As stated previously the DG has had a major problem with implementation and many of the MSs land in front of the ECJ and once again lawyers are opposed, quite possibly the DG's lawyers will be called on to state the DG's view and the work of the original official will be crucial for the process of the case.

### 3.7 ESTABLISHING DG ENV.

The history of the DG has reflected that of the ecological movement in general, starting off from scratch as an idealistic group of individuals loosely organised with the desire to further an environmental agenda. At first it was given the limited remit by the Commission of providing other DGs with advice. In 1972-3 there were just six officials working for the nascent DG ENV,<sup>73</sup> allegedly environmentalists rather than Commission officials by career.<sup>74</sup> Originally the DG was a; 'special service on environment and consumer protection' between 1973-1981.<sup>75</sup> Owing to the inherent potential of the environmentalist agenda and the dynamic, original leadership of a French Director the number of officials leapt to around 40<sup>76</sup> with the absorption of engineers from the Euroatom project which had recently been halted. The motivating and organising force for the DG was the French Director. Around 1978 he was given the title "a titre personnel"<sup>77</sup> and became a Director General.<sup>78</sup> The final chapter of the first phase of Community environmental activity was completed in 1982 with the establishment of a Directorate General for the environment whereas before it had been part of a joint Directorate.

<sup>68</sup> Interview with NGO

<sup>69</sup> *ibid*

<sup>70</sup> Interviews with Commission Officials: DG ENV

<sup>71</sup> *ibid*

<sup>72</sup> *ibid*

<sup>73</sup> *ibid*

<sup>74</sup> Cini, M. *Administrative Culture in the Commission*, in Nugent, N (ed) *At the heart of the Union*, second edition, (2000) Basingstoke, Macmillan Press, 2000 p.80

<sup>75</sup> Interviews with Commission Officials: DG ENV

<sup>76</sup> *ibid*

<sup>77</sup> *ibid*

<sup>78</sup> *ibid*

Originally environmental issues had not been addressed explicitly under the founding treaties and were dealt with piecemeal as required by the various DGs affected.<sup>79</sup> Environmental concerns had been; 'motivated by the strong desire to eliminate trade distorting regulatory differences in national environmental regulations concerning product standards.'<sup>80</sup> After the 1972 Paris summit the Community openly began its own environmental policy, primarily all of the resulting policies (70 legislative texts)<sup>81</sup> and legislation were based on Articles 235 EC and 100EC, but the Environmental action programmes were perhaps more important, as these and some broad frame work directives served to prepare the way for the gradual extension of Community and DG ENV's competencies into new areas; these acted as bridgeheads for follow up 'daughter' directives.<sup>82</sup>

The intention of the founding fathers of the DG was to find policy areas, like water and waste, which did not come under the traditional sectoral headings of agriculture, trade etc.<sup>83</sup> There was in effect a deliberate desire to separate a purely environmental sector from the rest of the Community activities, and to thus derive independent competencies which would justify fully fledged institutional and later Treaty based autonomy. Policy integration with the other DGs was also deliberately avoided, to ensure that the nascent DG went beyond being an internal Commission pressure group. From the start the DG used every opportunity to promote new legislation.<sup>84</sup> One example of this opportunism came when the French decided to improve the quality of their bathing water, the Commission quickly stepped in with the idea of extending such a goal to the Community, six months later the Council adopted the proposal.<sup>85</sup> It is interesting to note that a lot of environmental legislation was and is increasingly discussed first in Brussels and then adopted by MSs. Today 75% of environmental legislation in Germany is of Brussel's origin, Norway is the same, 80% of the UK's environmental legislation is from Brussels and 100% of that of Portugal and Spain.<sup>86</sup> Legislation is literally created at the European level or adapted from legislation already in existence in some MSs and then imported into other MSs.

A second phase of legal and institutional development began with the 1983 Stuttgart European Council, which emphasised the need to clean up pollution and in 1985 the European Council decided that the environment should be included in the Single European Act. Finally in 1987 environmental concerns and Community activities were given their own clear legal form under chapter seven. How DG ENV expanded both its competencies and staff numbers surprised many, a good summary of the second phase of legal development is quoted below:

'The case of environmental legislation is significant and not untypical . . . The SEA changed this by introducing a specific legal basis for environmental legislation, albeit requiring unanimity (and with a first reference to subsidiarity). The next stage was inclusion in the Treaty on European Union of new provisions switching the voting basis from unanimity to qualified majority. The question of whether the Commission is successful in its attempts to expand competencies is thus far from rhetorical . . . it is not unreasonable to suggest that the Commission has been a powerful catalyst in making environmental standards a European issue.'<sup>87</sup>

<sup>79</sup> Interview with Commission Officials: DG ENV

<sup>80</sup> See note 38 Ziegler (1996) p.134

<sup>81</sup> *ibid* p.138

<sup>82</sup> Liefferink, D and Andersen M.K. (eds): *The innovation of EU environmental policy*, (1997) Oslo, Scandinavian Press p.13

<sup>83</sup> Interviews with Commission Officials: DG ENV

<sup>84</sup> *ibid*

<sup>85</sup> *ibid*

<sup>86</sup> *ibid*

<sup>87</sup> See note 33 Edwards; Spence (1997) p.19



The inclusion of the EP in the co-decision making procedure on environmental issues has weakened the Commission and the Council as a whole, and strengthened that of the environmentalists, as the parliament was up until recently more environmentally oriented than elements of the Commission and Council.<sup>88</sup>

Quite apart from the large amounts of legislation which the DG generated during the period, in 1986 a decision was reached to develop an instrument previously used for trade and industry, that of a formalised complaint procedure. Individuals could now send complaints about MS failures to implement environmental legislation direct to the Commission. The Commission has traditionally had too few staff to effectively monitor the implementation of legislation by MS ministries. The decision was publicised and as a result the number of complaints went from 6 per year in the early 80s to 600 a year in 1986 and 1987. As each complaint had to be seen by the Commissioner, the limited resources available to the legal unit were increased. The pro-active approach of the DG had once again resulted in an extension of their influence over MS implementation rights and also resulted in an increase in staff numbers. What also emerged from this move was that the Commission decreased their perceived distance from the European citizen, this was and is a desirable institutional goal.<sup>89</sup> Also the DG and therefore the Commission probably also succeeded thereby in evading accepting responsibility for the failure of the MSs to fully implement environmental legislation. The complaint procedure was not required of the DG and was deliberately created from a particular interpretation of Article 169.<sup>90</sup> It is in effect a voluntary service offered to the public by the Commission and as such has to be considered an extra, which could be removed, should the Commission consider it a liability.<sup>91</sup> The Commission is at pains to stress this point when they receive complaints about the slowness of the process.<sup>92</sup>

It is a curious construction rather similar to the initial environmental legislation, founded on an elaborate interpretation of an article. A complaint sets off a procedure with the Commission alarming the DG about a potential failure of a MS to follow and implement legislation,<sup>93</sup> and inevitably plunges the individual making the complaint into the labyrinthine politico/bureaucratic world of the Community. Articles 26-28 allow the Commission to take legal proceedings against the MS should it be necessary. Complaints can take on average of 50 months<sup>94</sup> and can apparently be wound up for political reasons by other Commissioners or MSs,<sup>95</sup> with the decision clouded in secrecy and often far from satisfactory for the person making the complaint.<sup>96</sup> NGOs want to retain the process because there is nothing else available. Ironically the Commission and the DG have in a sense become victims of their own success. According to some sources almost half of the infringement cases outstanding in the EU between the Commission and the MSs are environmental in their origin.<sup>97</sup> Environmental laws have become highlighted as a result and high level disputes have occurred between MSs and the Commission. The friction caused by the increase in infringement cases would appear to have led to the next phase in the development of the DG. Despite the increase in cases, aver-

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<sup>88</sup> See note 82 Liefferink; Andersen (1997) p.79

<sup>89</sup> Interviews with Commission Officials: DG ENV

<sup>90</sup> *ibid*

<sup>91</sup> *ibid*

<sup>92</sup> House of Lords, Session 1997-98, Select Committee on the European Communities, Second Report. *Community Environmental Law: Making it work* (1997) p.153

<sup>93</sup> *ibid* p.153

<sup>94</sup> *ibid* p.73

<sup>95</sup> *ibid* p.150

<sup>96</sup> See note 92 House of Lords, Session 1997-98 p.89

<sup>97</sup> Interviews with Commission Officials: DG ENV

aging around 600 a year<sup>98</sup> there was not been a parallel increase in staff numbers, in fact only fifteen employees are involved.

### 3.8 EVIDENCE OF ENTREPRENEURIAL ACTIVITY

When considering the case of the DG in question it is noticeable that it appears to have behaved in an entrepreneurial manner both during its development and in its exploitation of windows of opportunity. One official stressed the connection between an environmental disaster and the generation by the DG of a piece of legislation in response.<sup>99</sup> Prior to the accident or disaster any Commission policy for the sector concerned may well have been opposed by lobbyists and MSs, afterwards there is almost a common consensus on the need for action which the DG uses to its advantage. On 10 July 1976, an explosion occurred in a trichlorophenol reactor of the ICMESA chemical plant near Seveso in Italy. A toxic cloud descended on Seveso and resulted in serious health problems for the local inhabitants. The Commission apparently produced, in response, the Seveso Directive, Directive 82/501/EEC. The generation of this directive resulted in the production of several more directives, jumping on the band wagon, in a manner of speaking: Directive 89/391/EEC, on measures related to occupational safety and health; Directive 89/654/EEC, on minimum safety and health measures at work; Directive 90/219/EEC, relating to biotechnology; Directive 90/313/EEC, on the freedom of access to environmental information and Directive 89/618/Euratom, on public information during a radioactive emergency. An accident in Basel, Switzerland in 1986 which caused massive pollution of the Rhine was one of the main causes of the Seveso Directive being amended twice, by Directive 87/216/EEC of March 1987 (OJ No L 85 of 28 March 1987) and by Directive 88/610/EEC of November 1988 (OJ No L 336 of 7 December 1988); “Both amendments aimed at broadening the scope of the Directive, in particular to include the storage of dangerous substances.”<sup>100</sup>

The sinking of the tanker *Prestige* in November 2002 led to the Commission apparently produced a proposal for a directive on ship-source pollution and on the introduction of sanctions, including criminal sanctions, for pollution offences.<sup>101</sup> The sinking of the tanker *Erika* in 1999 was seemingly the last straw, which allowed the Commission to re-introduce the proposal for environmental liability.<sup>102</sup> The explosion at the AZF site in Toulouse apparently led the Commission to immediately consider the need for an amendment of the Seveso II Directive, although one of the Community commentators on the proposal stressed that the site of the explosion was already fully covered by existing legislation.<sup>103</sup> In 2000 the serious mining accident at Baia Mare resulted in the Commission generating first a communication entitled; “Safe operation of mining activities” (COM (2000)664 final) and then the proposal for a complementary directive.<sup>104</sup> According to internal sources the DG had responded in a particularly entrepreneurial manner with the mining directive.<sup>105</sup>

<sup>98</sup> See note 92 House of Lords, Session 1997-98 p.76

<sup>99</sup> *ibid*

<sup>100</sup> DG ENV; ‘Chemical Accident Prevention, Preparedness and Response’ <http://europa.eu.int/comm/environment/seveso/>

<sup>101</sup> (COM(2003) 92 – C5-0076/2003 2003/0037(COD)) Report on the proposal for a EP and Council directive on ship-source pollution and on the introduction of sanctions, including criminal sanctions, for pollution offences

<sup>102</sup> Euractiv.com 30.03.2004, <http://www.euractiv.com/cgi-bin/cgint.exe/1607596-366?11&1011=index>

<sup>103</sup> (COM(2001) 624 final—2001/0257 (COD)) (2002/C 149/05) Opinion of the Economic and Social Committee on the ‘Proposal for a Directive of the EP and of the Council amending Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances’

<sup>104</sup> IP/03/784 Brussels, 2 June 2003. The proposed Directive will help prevent serious accidents resulting from the mismanagement of mining waste, like the disaster in Baia Mare in 2000, where the whole of the Danube was polluted with cyanide, said Environment Commissioner Margot Wallström

<sup>105</sup> Interviews with Commission Officials: DG ENV



One final point is that the Commission also used the accidental existence of a common consensus on an issue to press for legislation. In 1981/2 there was considerable concern about the acidification of rain and the woods dying, which forced governments to get together to find a solution. At the same time the UK wanted to introduce lead free petrol to deal with the social problems of children suffering from lead poisoning as a result of living next to major roads. The DG sensed their chance so in 1983 there were three to four successful proposals on air pollution.<sup>106</sup> On a treaty level the disasters led to the SEA and the Maastricht Treaty expanding the rights of the public to information.<sup>107</sup>

Whilst the above are proof that the DG responds to accidents with legislation this could be merely the common-sense act of a government department. But the interviews which were carried out appeared to reflect an entrepreneurial approach beyond that of a normal government department. Why was legislation generated at Community level when arguably national legislation could have been sufficient? As with the bathing water directive the DG was extremely pro-active in pushing for the Community to set standards for all the MSs despite the reluctance of many of them. At times the proposed Community legislation potentially duplicated or confused already existing international and national laws. This raises the question of motive; why not leave the already existing standards in place?<sup>108</sup> The same question can be raised with regard to the Toulouse accident and the Commission desire to implement an amendment although there was already legislation in place which should have been implemented.<sup>109</sup>

The apparent failure of the DG to generate legislation which results in implementation taking place by the MS ministries can be seen either as the problem of the MSs or of the DG. According to one DG source, when 15 MSs fail to properly implement legislation, as is true for one directive, then there must be something wrong with the law.<sup>110</sup> An implication being that the law was not precise enough, or too precise and not easy for the civil servants on the ground to enforce. Possibly the entrepreneurial nature of some of the legislation is reflected in it being easier to generate than finally to implement, the goal of the generating legislation in the DG at all costs could be said to have been, at times, incompatible with the goal of creating legislation which can be and is implemented on the ground. This was also mentioned as a problem by the author of the EP's opinion.<sup>111</sup> Another point is that little is done by the DG itself to ensure that implementation takes place, and monitoring is treated as a minor issue when compared to generating legislation, despite the general understanding of the need to improve implementation. The Legal unit which has to apply legal pressure on MSs which fail to comply is badly understaffed and there has so far not been any reallocation of resources to ensure that it occurs. The infringement problem is discussed more in the next chapter but suf-

<sup>106</sup> See note 101 (COM(2003) 92 – C5-0076/2003 2003/0037(COD))

<sup>107</sup> De Marchi, B; Funtowicz, S and Ravetz, J. *The long road to recovery: Community responses to industrial disaster*. The United Nations University, 1996 <http://www.unu.edu/unupress/unupbooks/uu211e/uu211e00.htm#Contents>

<sup>108</sup> See note 103. (COM(2003) 92 – C5-0076/2003 2003/0037(COD)) "Danger of conflict between legal regimes... The Commission is proposing to incorporate the MARPOL rules on discharges into Community law. In so doing, however, it also makes a number of modifications to the internationally agreed texts. For example, it abolishes the derogation introduced for discharges resulting from damage to a ship. These modifications are undesirable in terms of content but also contribute to a proliferation of divergent global, European and national rules. Your rapporteur intends therefore to table an amendment reversing this mistaken approach."

<sup>109</sup> (COM(2001) 624 final—2001/0257 (COD)) (2002/C 149/05) Opinion of the Economic and Social Committee on the 'Proposal for a Directive of the EP and of the Council amending Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances'

<sup>110</sup> Interview with Commission Official: DG ENV

<sup>111</sup> See note 103. (COM(2003) 92 – C5-0076/2003 2003/0037(COD)) 'Some forms of wording in the proposal are unclear or open to various interpretations. Precisely because legal provisions are involved, accuracy and clarity matter greatly. Your rapporteur is accordingly proposing a number of improvements.'

fice it to say that there seems to be a sense that the DG needed to generate legislation but did not seem over worried about its implementation, if that caused too many problems with the MSs then it could be toned down.

In part, the large amounts of environmental legislation could be seen to have been produced owing to sectorization. The limited amount of inter DG communication and coordination resulted in some DGs generating policies simply aimed at their sectors and their organizational needs and logic, rather than considering the needs of the EU and Commission as a whole.

### 3.9 CONCLUSION

So now we have seen that at a macro level the Commission has often shown itself to be entrepreneurial, flexible and ready to exploit situations in the interests of the European project. The appearance of the rigid hierarchical structures inside the organization appears contradictory to the notion of flexibility, and immediately suggests to the observer that rigorous non hierarchical possibilities must be available for the Commission to have enjoyed the success it has. Closer examination reveals that the micro level of the officials shows the entrepreneurial qualities that the hierarchy appears to lack. Furthermore the rigidity of the hierarchy seems less dramatic when observations are made about how the Commission works in practice and what sort of behaviour it tacitly encourages. There is a real sense that the bureaucratic rigidities are retained but ignored for certain phases in the EU cycle.

The Commission has been shown to encourage self sufficiency in the officials with staff members having to fend for themselves. Initiative is promoted as any success gained is often down to the decision to act being taken by an official. Freedom is very present with the official possessing incredible room for choice and discretion, quite unlike anything their equivalent in the MS civil services would possess. The official must be able to network and thus possess the social skills which are basic to success. Officials are encouraged to compete for everything in the Commission, for their position, their promotion - the possibilities for which can be extremely scarce in particular to the position of Head of Unit, for their dossiers.<sup>112</sup> And finally entrepreneurial sensitivity to the opportune moment to introduce a legislative product that is sure to succeed. The DGs which possess these officials, who have, as it were, been through fire, are in possession of a valuable commodity. If correctly placed these officials could be expected to carry their DG to success.

The vast amounts of environmental legislation that Europe has produced combined with the information gained during interviews, appear to show a DG made up of extremely capable officials, often lawyers, who have not only been quite entrepreneurial in their behaviour but also successful in ensuring the passage of their laws, a task which involves political and networking ability. The DG created work for itself. The absence of European law at all in the 1950s maybe meant that there was a vacuum waiting to be filled with few institutional opponents present, 'an ecological niche' as one official put it,<sup>113</sup> or a market opportunity which allowed the DG to be so successful. In fact the combined evidence of the accident legislation correlation and the increased staff turnover, would appear to be suggestive evidence that entrepreneurs have been present in the DG combining very effectively with Policy Networks. The DG showed dynamic officials seemingly encouraged to circumvent hierarchies so long as this was deemed desirable by the Commission as a whole. The next chapter will show the

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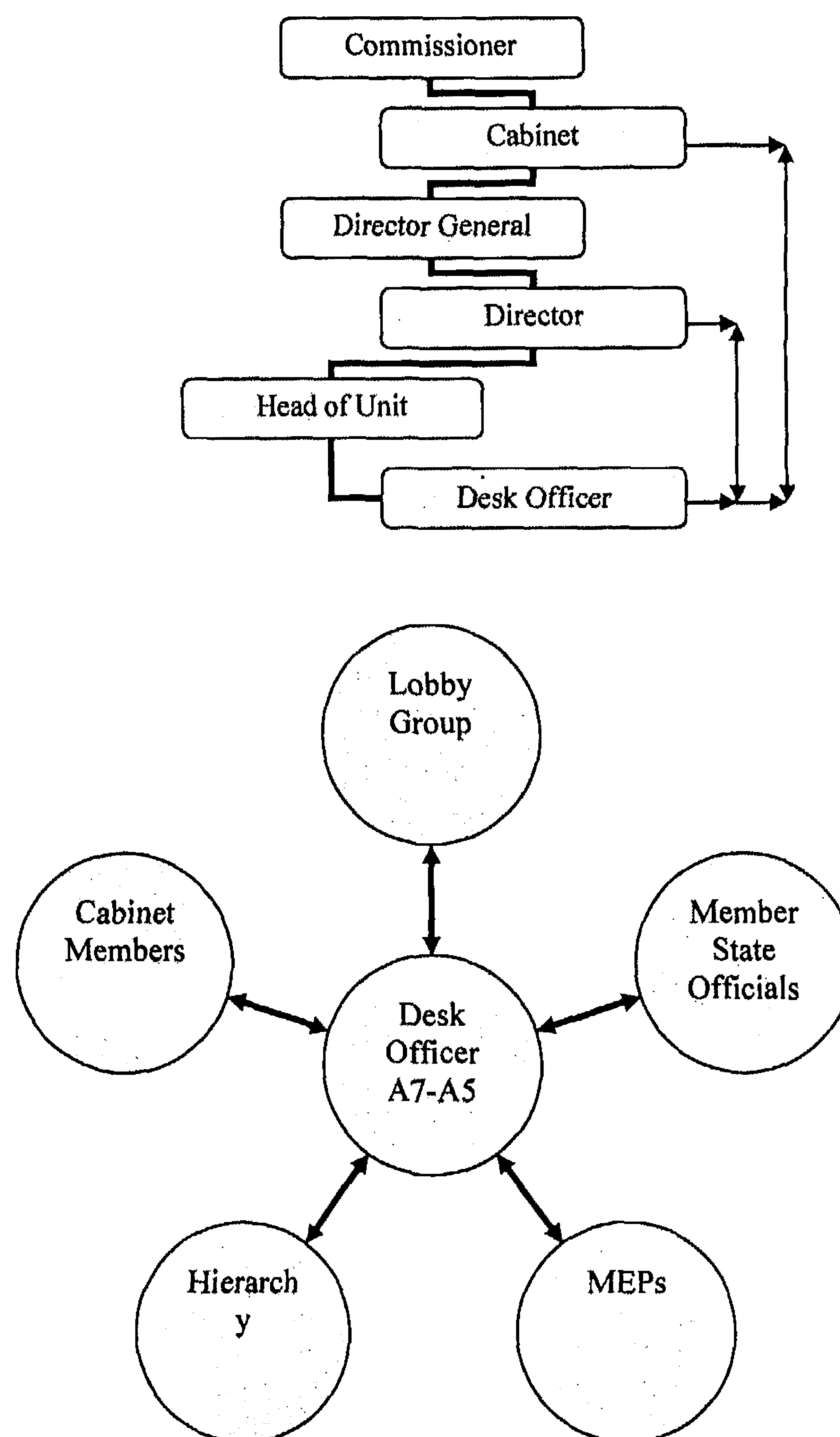
<sup>112</sup> Interview with Commission Officials: DG ENV

<sup>113</sup> Interviews with EEA Officials



Commission using various methods to temporarily clamp down on some of this behaviour. OLAF also finally helped serve similar Commission goals. Both UCLAF and the DG show the importance of individual officials and their scope for taking action.

**Figures 1 and 2** Formal and Informal lines of Hierarchy and the choice of principals for the Desk Officer



**Interview Dates****DG Environment Officials**

Interviews carried out with 16 officials between 09.4.2003 and 16.02.2005

**DG Cabinet and ex Cabinet Members**

Cabinet Member 11.06.2003

Ex-Cabinet Member 03.06.2003

**European Parliament**

MEP 24.04.2003

MEP assistant 05.03.2003

NGO Official 01.04.2003

**NMS Officials**

Hungary

Official 1. 03.03.2005

Official 2. 17.03.2005

Czech

Official 28.1.2005

Poland

Official 31.03.2005

Estonian

Official 04.03.2005

Lithuania

Official 18.03.2005



#### 4. DG ENV 2

### COMMISSION SLOW DOWN; MS INTERVENTION AND COMMISSION BUREAUCRATISATION: DG ENV

#### INTRODUCTION

In the last chapter we saw the possibilities for dynamism in the Commission and for entrepreneurial officials. When the Commission is going through a positive stage in the EU cycle of integration and stagnation, then this dynamism and officials with the ability and will to recognise chances to promote their DG and expand their legislative base are a valuable resource. Some sectoral loyalty is to be expected and so long as it is more than matched by organisational loyalty and the joint sense of integratory mission then there is little to worry about. When the situation changes and legislative output needs to be curbed and a less strident and dynamic (threatening) profile is needed, then the inner equilibrium of the DG and Commission will be lost. Sectoral Policy Networks become less desirable and prove to be hard to control by a hierarchy which may well find itself increasingly isolated. OLAF showed us the Commission resisting OLAF and using it, seemingly split in its approach to the reform. The DG will show something similar occurring.

By the beginning of the 1990s some of the major types of environmental problems were covered by EU policies and there were a broad range of policy instruments in position: environmental standards, product norms, emission standards, economic instruments and agreements. Two trends began to emerge during this period, one was a general slow-down in Commission legislative activity which was more than matched in the environmental field. The second was a greater emphasis through the 1990's that environmental concerns and legislation could no longer be allowed to develop independently from main stream policies. Sectorisation had gone too far and needed to be curbed. In the face of increasing sectoral DG fragmentation there was a movement in the Commission as a whole towards enforcing legislative consistency. Integration units were created in other DGs to try and ensure that environmental concerns were considered in, for example, agriculture and vice versa. These units were apparently often treated as spies by the DG in which they were based and often isolated. The move towards more Commission integration heralded a general change in the Commission's attitude towards the DG, which was considered in some quarters to be ineffective for improving the environment.

Seemingly the Santer Commission's 'less but better' slogan meant in effect that although the unspoken benchmarking method of legislation generation proving a DG to be successful remained true, the Commission wanted to assume a lower profile and that would mean less legislation. In part the lower profile of the Commission was in response to the MSs hostility after the Delors period as shown in the subsidiarity debate. The competition between DGs to get legislation adopted therefore apparently became harder and the hurdles that legislation was expected to pass became tougher. The introduction of impact assessments on legislative proposals placed another hurdle in the way of the official; whilst it also helped to re-integrate the Commission and ensure more legislative consistency. Now the other DGs had to be involved earlier on and detailed assessments of the social, economic, environmental impact of legislation had to be carried out. DG legislation adoption by the Commission became more valuable

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<sup>1</sup> Cini, M. *Administrative Culture in the Commission*, in Nugent, N (ed) *At the heart of the Union*, second edition, (2000) Basingstoke, Macmillan Press, 2000 p.84

as it becomes scarcer. In a tough market place entrepreneurial instincts and abilities were even more called for in DGs and officials.

Given that there had been a gradual move from environmentalism to concern about economic issues in the Commission and EU, the difficulties of selling environmental legislation to the College became steadily harder. The result was a DG which was concerned with backing legislation which it was sure would be adopted by the College and the MSs. It became harder for officials to get their legislation selected by the DG let alone adopted by the Commission. The response of some DG officials was to leave the DG and to move where their legal entrepreneurial talents can better be used. There was seemingly a correlation between the level of staff turnover and the decline in the possibilities for legal entrepreneurial activities, particularly when compared to the possibilities available in other DGs and sectors. It was also difficult for the DG to succeed in having its proposals accepted during the inter DG discussion phase and many of the policies were drastically watered down or refused entirely,<sup>2</sup> industry was said to have had a strong presence in at least four of the major DGs and DG ENV often only has one possible coalition partner in DG SANCO (DG Health and Consumer Protection). When compared to the boom times of the late 1980s and early 1990s the rest of the 1990s were a time of stagnation or maturing depending on the perspective adopted. In the mid 1990s the DG began discussing policy chains, and the focus became more on policy outcomes rather than just the production of legislation. Given the impressive amounts of legislation but less impressive state of the environment and implementation this was a logical move.<sup>3</sup> Other policy tools were introduced, like the industry voluntary agreements, to try and achieve what legislation previously achieved but some of these were quite unsuccessful.<sup>4</sup>

The result of the changes in the Commission and the effect that this had on the DG was the 5 Environmental Action Programme (EAP) of 1993. This was different to what had gone before and apparently reflected a change in attitude/ ideology of some within the DG.<sup>5</sup> One obvious example was the fact that the 5EAP stated the need for industry and the DG to work together more. This programme marked a watershed and it is worth mentioning some of the variant ways that it has been perceived. In some ways the 5EAP was argued to be an excellent strategic move by the DG,<sup>6</sup> an entrepreneurial merger or franchise operation with other DGs which recognised the changes in the operating field or market of the DG and quickly adapted to them, recognising the opportunities and threats that the status quo held. Generating legislation had become harder to justify in the Commission and the issues had become more complex and involved more sectors. Thus some officials considered it to be inevitable that the 5 and 6 EAP of 2002 were more and more complex. The playing field had changed for policy making has changed, so DG performance has to be assessed bearing that in mind, 'Things are not as simple anymore not as proscriptive as in the old days.'<sup>7</sup> Certainly with regard to the changed institutional balance between the Commission and the EP, strategy was very much in play. The growth in EP involvement meant that the 6EAP had to go through the co-decision process, it was obvious that any targets included would be debated for months and more studies would be needed and analyses, which would have made it impossible to get the programme through. Therefore it made sense for the officials responsible to avoid listing targets and concrete goals as had been the case in previous EAPs. According to some the recent EAPs repre-

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<sup>2</sup> Interview with Commission Official: DG ENV

<sup>3</sup> Skjaerseth and Wettstad: *Understanding the Effectiveness of EU Environmental Policy: How can Regime Analysis Contribute?* In *Environmental Politics* (2002) Vol 11 No 3 p.100

<sup>4</sup> See note 1 Cini (2000) p.84

<sup>5</sup> *ibid* p.87

<sup>6</sup> Interviews with Commission Officials: DG ENV

<sup>7</sup> *ibid*



sented a victory by the environmentalists since they were more strategic<sup>8</sup> in their approach than the previous ones and showed that the DG had learned from previous mistakes,<sup>9</sup> like the lack of environmental legislation implementation.

The programme stressed the need to concentrate on implementation and less on legislation and of course more on the integration of the Commission implying; 'the inclusion of environmental concerns into sectoral policy domains.'<sup>10</sup> The same author stated that it could be the case that DG Environment staff now had to consider the 'practical feasibility of their proposals.'<sup>11</sup> Sustainability was the guiding principle in the present programme and it aimed to encourage patterns of development, which would allow economic growth for future generations. The Director General was said to have felt the need to use seconded national officials to develop the 5EAP rather than permanent officials, because of personnel problems which led to 'tension and conflict'<sup>12</sup> within the DG as staff formed into what were effectively blocks based on their backgrounds and interests. The detractors from the recent EAPs made a less polite assessment of the programmes stating about the 6EAP, 'it usually amounts to little more than "mission" statements, biased research objectives and pious "strategy jargon" to which few strings are attached.'<sup>13</sup> A major weakness of the programme was, according to some, that it lacked real goals and was far too vague,<sup>14</sup> this last point could be seen as a strength, 'It is the vagueness and all embracing nature of . . . that has made it acceptable to many political dimensions, environmentalists and industrialists. . '<sup>15</sup> The sixth programme was said to be devoid of any timetable and even vaguer, continuing the process started with 5EAP.

The dynamic, dominant side of the Commission, armed with legal powers to control the MSs is shown clearest in the infringement procedure. Article 226 EC Treaty allows the Commission to effectively take MSs to court for failure in putting EU legislation into force. It is here that confrontation and tension can be expected to be seen. During dynamic periods of integration the DG set up a complaint's procedure to facilitate and strengthen its infringement detection and subsequent prosecution powers. In the DG there is a section that deals with infringements, the legal section, and in conjunction with the Commission legal services decides when to submit the infringement to the ECJ. When however the Commission is reclusive, these powers can be expected to be something of an embarrassment and a problem, and this was seemingly the case. A large proportion of the infringement cases before the ECJ were environmental in their origin, this was a political problem and not just a legal one. Whatever the rhetoric, despite the declared intention of the DG to concentrate on implementation<sup>16</sup> and a doubling in the work load<sup>17</sup> the departments in the front line of implementation did not see their numbers increased,<sup>18</sup> rather an attempt appeared to be underway to outsource or re-nationalise part of the infringement process.<sup>19</sup> Budgets, which were essential for ensuring implementation i.e. for missions in MSs and for meetings in the DG, were apparently cut rather than increased.<sup>20</sup> Instead of an active management regime reorganising the DG to concentrate on implementation, the last few years were said to have seen reactive management behav-

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<sup>8</sup> Liefferink, D and Andersen M.K. (eds): *The innovation of EU environmental policy*, (1997) Oslo, Scandinavian Press p.119

<sup>9</sup> *ibid* p.116

<sup>10</sup> See note 1 Cini (2000) p.81

<sup>11</sup> *ibid* p.82

<sup>12</sup> *ibid* p.124

<sup>13</sup> House of Lords session 1997-98, Select Committee on the European Communities, Second Report. *Community Environmental Law: Making it work* (1997) p.177

<sup>14</sup> Interview with Commission Official: DG ENV

<sup>15</sup> See note 8 Liefferink; Andersen (1997) p.119

<sup>16</sup> See note 14

<sup>17</sup> Interview with MEP

<sup>18</sup> Interview with Commission Officials: DG ENV

<sup>19</sup> *ibid*

<sup>20</sup> *ibid*

ious<sup>21</sup> and no re-training staff in the managerial tasks needed in implementation took place.<sup>22</sup> In the last couple of years the DG has apparently been favouring the use of 'strategies' rather than policies (which had been mentioned in the 6EAP). The problem with these is that they are said to be harder to control and enforce implementation on, than legislation, which suggests that serious implementation is increasingly off the cards.<sup>23</sup> There is said to be a "toleration of infringements" despite there being lots of discussion about monitoring implementation. In practice the DG states that it is "very complex" and infringements proceedings are expected not to be launched so often.<sup>24</sup>

#### 4.1 RE-ORIENTING THE DG

Apparently the general slow down in Commission legislation generation was not enough to slow the DG enough to satisfy some. Some Policy Networks were more than capable of holding to their mission and pursuing an environmentalist agenda. So during the whole of the 1990's period, there were attempts to directly influence the way that the DG was organised and the mentality of the staff by certain MSs and also increasingly the Commission. The intervention into the DG probably also resulted from various pressures among which were the extension of the European Parliament's (EP) rights of co decision with its active environmental committee,<sup>25</sup> which threatened danger as the DG environment's environmental activists were able to co ordinate their activities with the EP,<sup>26</sup> and also with some of the MS environmental ministers in the Council.<sup>27</sup> In the 1990s both these institutional forces appeared to have been more environmentally active than the Commission as a whole and pushed for more staff to be granted to the DG,<sup>28</sup> and the Commission as a whole had been weakened vis-à-vis the EP.<sup>29</sup> The northern enlargement of 1995 to include several environmentally active MSs had strengthened the environmentalists in the Union. What followed has been described by Michelle Cini who stated the following:

'A conscious attempt by elites within the Commission to alter DG XI's underlying culture . . . has led to a top-down exercise in altering the underlying assumptions, belief systems and ethos of DG Environment officials . . . what this amounts to is an attempt to go beyond structural and procedural change to change the underlying rationale of and justification for environmental policy.'<sup>30</sup>

Seemingly in the view of Cini the DG took on the appearance of being a recalcitrant problem case,<sup>31</sup> and it was considered that it was necessary to create a new identity for the DG and a new ideology which was based on market views and co operation with industry and not on ecological purism.

Some commentators linked the move towards deregulation in the DG to the growing presence of British officials both permanent and seconded.<sup>32</sup> Seconded officials are appointed by a MS

<sup>21</sup> Interviews with Commission Officials: DG ENV

<sup>22</sup> *ibid*

<sup>23</sup> Interviews with Commission Officials: DG ENV and NMS officials

<sup>24</sup> Interviews with Commission Officials: DG ENV

<sup>25</sup> See note 8 Liefferink; Andersen (1997) p. 79

<sup>26</sup> Interviews with Commission Officials: DG ENV

<sup>27</sup> *ibid* in particular with regard to the electronic waste directive.

<sup>28</sup> See note 8 Liefferink; Andersen (1997)

<sup>29</sup> *ibid* p. 79

<sup>30</sup> See note 1 Cini (2000) p.84

<sup>31</sup> *ibid* p.88

<sup>32</sup> Interviews with Commission Officials: DG ENV



for a period of three years to work in the Commission. More than many other parts of the Commission, DG ENV employed large numbers of seconded officials<sup>33</sup> almost 20 % in 1999. According to one source over half DG Environment's staff were 'non establishment' in 1997,<sup>34</sup> and it was heavily dependent on the specialised knowledge of NGOs as well as MSs and industry, this was said to be a sign of 'organisational weakness.'<sup>35</sup> Both the 5 and 6 EAP were stated to be the work of British officials and the UK was noted as having a strong presence in the management of the DG.<sup>36</sup> This was particularly the case in the second half of the 1990's. Others have highlighted a clash in the Franco/Germanic proscriptive legislative approach and the UK one.<sup>37</sup> Up until 2000 the DG apparently remained to some extent divided with some units still producing impressive amounts of legislation,<sup>38</sup> whilst some in the hierarchy favoured less legislation and greater use of softer methods.<sup>39</sup> The legislation generation can be said to be due to "epistemic communities" or Policy Networks, bearing in mind the active involvement of Environmental ministers and MEPs:

'... officials have over the years gradually acquired for themselves a de facto policy role often supported by attendant interest groups and so called "epistemic communities" of experts. Thus, a considerable corpus of environmental law was developed without a strong Treaty base and finally legitimised in the SEA in 1986... Only now, perhaps, do Member states realise the huge implementation costs of such environmental policies... An effective advocacy coalition of Commission officials, the international scientific community, and a vociferous and skilful environmental movement acting as a "megaphone for science" made the running.' National governments (including Britain which now leads the opposition to these laws) went along with it, largely in ignorance of implementation problems ahead.'<sup>40</sup>

Some of the MSs had seemingly come to regret the willingness with which they had allowed their environment ministers to have a free hand earlier. The following statement by a Commission official illustrates this:

'The process of adopting legislation is very chaotic with environment ministers voting yes when their treasuries wouldn't. Usually treasuries will notice later on but sometimes not. If you (Commission official) want a directive to be passed then environment ministries can put pressure on the DG and so force the directive past internal blockages; MS environment ministries like this too since EU legislation costs them less and is easier to get into their countries' laws.'<sup>41</sup>

There was a real sense of some MSs, in particular allegedly the UK, wanting to deal with the DG at the first possible moment and to make sure that there were no more unpleasant surprises in store. Throughout the 1990s Germany and the UK were stated to have been vying with each other to staff the DG.<sup>42</sup> In 1995 with the northern enlargement came three new MSs, the pro-environment grouping on the Council went from 3 to 6 votes versus 9 which meant they had a blocking minority.<sup>43</sup> In particular the advent of Green ministers in 1998 in three

<sup>33</sup> Nugent, N. *The European Commission*, (2000) Houndmills, Basingstoke, Palgrave, p.165

<sup>34</sup> Grant, W, Mathews, D, Newell, P, *The effectiveness of EU Environmental Policy* (2000) Basingstoke, Macmillan Press p.20

<sup>35</sup> *ibid* p.21

<sup>36</sup> *ibid*

<sup>37</sup> See note 34 Grant; Mathews; Newell (2000)

<sup>38</sup> The waste unit for example. Interview with Commission Official: DG ENV

<sup>39</sup> Interviews with Commission Officials: DG ENV

<sup>40</sup> Mazey S and Richardson J 'The Commission and the Lobby' in Edwards G and Spence D 'The European Commission' (1997) p.184

<sup>41</sup> Interviews with Commission Officials: DG ENV

<sup>42</sup> Interview with MEP

<sup>43</sup> *ibid*

large MSs, Germany, France and Italy had Green ministers, would have meant problems for UK once things reached the council level. To counter this the UK was alleged to have lobbied hard for the position of Director General and got it and the UK could so 'stop laws at source.'<sup>44</sup>The Germans and the UK in the DG seem to have been most at loggerheads.<sup>45</sup>The Director General was alleged to have favoured voluntary agreements with industry as opposed to legislation.<sup>46</sup>

## 4.2 MS VERSUS POLICY NETWORK

There appear to have been a few methods for the Policy Network in the DG to be stopped by the more UK dominated top management. The first has been mentioned, seconded national officials, or just simply national officials were involved in a small group and used to draw up programmes for the DG. Informal usage was alleged to have been made of various organisational features like the Policy Group where the Directors and Director General met to curb policy, but more on that below. And finally reorganizations of large elements of the DG were stated to have ensured that members of the network were unable to easily maintain any entrenched positions, as we will see. This is a similar method to that which was alleged to have been used in DG Agriculture by the Commissioner to defeat various Policy Networks.

Usually Policy Meetings in other DGs seem to have been intended for use by the senior management to discuss the running of the DG and not really to decide on policy direction and which policies (dossiers) were adopted. But in the DG this seemed to have become the case. Before any proposal could be pursued for possible inter-institutional discussion it had to be approved by the Policy Group Meeting. Present at the meeting were the top management and the staff member concerned. By that is meant the staff member who had drawn up a particular policy. Ostensibly in the DG the meeting was there to ensure that there was coherence in the policies further developed by the DG. In reality, it was said to often be the first time that the majority of the Directors had actually heard about a proposal previously agreed upon by one of their number.

The meetings themselves were alleged to have been hurried, badly prepared affairs<sup>47</sup> whose end decisions appeared to lack rhyme or reason.<sup>48</sup> Seemingly, no apparently predictable criteria existed for knowing whether a proposal would be accepted or rejected. Directors were said to have rejected other Directors' proposals for personal or political reasons, or used the common excuse of requesting more studies be carried out prior to acceptance. Some decisions were said to have been made to stop new legislative proposals being accepted at all.<sup>49</sup> For the humble Desk Officer attempting to develop a policy the meetings seemingly became a series of hurdles to cross. The first was to even get their proposal accepted onto the agenda of the weekly held meeting. The second stage was to get it through the meeting without it being rejected or requiring more studies to be made. The best strategy was seemingly to either have a proposal that no one understood or cared about<sup>50</sup> or to avoid the meetings all together.<sup>51</sup> Obviously some proposals failed to fall into these fortunate categories and frustration was the

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<sup>44</sup> Interview with MEP

<sup>45</sup> *ibid*

<sup>46</sup> *ibid*

<sup>47</sup> Interviews with Commission Officials: DG ENV Directors are given thick policy files late on a Friday to consider over the weekend and discuss at 10 on the Monday. Most lacked the time to do more than glance over the detailed proposal.

<sup>48</sup> *ibid*

<sup>49</sup> *ibid*

<sup>50</sup> *ibid*

<sup>51</sup> *ibid*.



result. The situation was said to have become so serious that in 2002 a report was requested from a consultancy firm, a sure sign of desperation,<sup>52</sup> which studied the meetings and came to some drastic conclusions. Firstly the staff did not understand the decisions of the meetings and what they were there for and secondly, the Directors did not seem to understand what their staff were doing, all in all, the meetings were dysfunctional. Yet despite that, the recommendations made were not acted upon and the meetings continued.

After this stage a policy document, which succeeded in being accepted by the Policy Group Meeting, was then sent to the staff meeting.<sup>53</sup> Here the administration (the services) and the Cabinet and Commissioner discussed proposals that had been fully developed and decided which should be put forward for inter-institutional discussion and final adoption by the Commission itself. The Cabinet were alleged to have all too often been badly briefed and failed to understand the complex nature of the directives they were asked to comment on. The result was said to be sometimes confused policy direction and proposals being rejected.<sup>54</sup> Examples occurred apparently of the Directors and the Director General agreeing for a proposal to be fully developed but failing to attain the Commissioner's prior approval; the proposals were then rejected in the staff meetings.<sup>55</sup> Again years of work appeared to go wasted due to a lack of communication often grounded in a lack of trust. The European Environment Agency was occasionally requested to comment and provide information on policies desired by the Cabinet.<sup>56</sup> The Commissioner and Cabinet appeared at times to prefer to discuss issues with the agency rather than addressing the DG services which they headed.<sup>57</sup> This lack of trust or rather relocation of trust to another community organisation might possibly partly have been due to the Commissioner being Scandinavian and the agency being based in Denmark. Small groups of advisers like the Cabinet, working in a large and complex DG where communication flows were unpredictable, inevitably resulted in friction.<sup>58</sup> Cabinet members were said to have become involved in networks within the DG and could help proposals to side track the formal administrative hierarchy and the Policy Group.<sup>59</sup> This was called the Delors method and provided highly effective, at least one member of the Cabinet in the DG confirmed that circumventing the DG services hierarchy was routine practice and essential since it was so slow and inflexible and the management problematic.<sup>60</sup> It should be noted that the Staff Meetings were seemingly abandoned presumably owing to their dysfunctional nature. Apparently all direct contact between the Cabinet and the administration was to be removed, instead it had to go via the hierarchy of the DG. This probably added to the problem of efficiency, supposedly in 2003 by May/June the DG had only covered 15% of its planned work for that year.<sup>61</sup> The Commissioner seems to have been environmentally active and a few long awaited pretty green agenda issues were finally adopted under her (environmental liability law) despite the Commission slow down. She was alleged to have had problems with the UK Director General.<sup>62</sup>

The functioning of the Policy Group could have been interpreted as having a policing function within the DG: enforcing certain standards and hierarchical control. And yet for policing to be effective it has to be predictable and the Policy Group Meetings appear to have been far from

<sup>52</sup> Interviews with Commission Officials: DG ENV

<sup>53</sup> *ibid*

<sup>54</sup> *ibid*

<sup>55</sup> *ibid.*

<sup>56</sup> Interviews with EEA Officials

<sup>57</sup> *ibid*

<sup>58</sup> See note 33 Nugent (2000)p.128

<sup>59</sup> Interviews with Commission Officials: DG ENV and See note 33 Nugent (2000)p.128-129

<sup>60</sup> Interviews with EEA Officials and ex DG ENV Cabinet Member

<sup>61</sup> Interviews with Commission Officials: DG ENV

<sup>62</sup> Interview with MEP

that. This raises the question of the function of the meetings, were they there to enforce policy choice? If that were the case then again some degree of predictability would have been expected. A possible interpretation of the unusual nature of the meetings would appear to be that the Directors and Director General participating in the Policy Group Meeting had the unspoken goal of reducing productivity by the Desk Officers, and maximising the discretion of the senior management. All policies had to go via the policy group and this was then a controlling mechanism to deal with the Policy Network. Vague criteria for assessments would have ensured the hierarchy's room for manoeuvre.

Maybe the reason for the odd way of doing business was that all bureaucrats have superiors as well as subordinates; the Policy Group was answerable to the EP, MSs, the public, their Commissioner and the College. The Desk Officers probably often had these superiors to the Directors in the Policy Group within their networks and thus had them as potentially powerful allies. There was maybe a sense in which the Policy Group was a desperate attempt by the Directors to exert control on the uncontrollable, namely, the Policy Networks. By demanding that further studies be made or rejecting a proposal outright the Policy Group is attempting to draw the fangs of the networks. Seemingly the Policy Group was only temporarily successful in this.<sup>63</sup> Another aspect of the Policy Group which needs to be addressed is the independence with which they reached their decisions. In particular the role of the Director General has to be taken into consideration. The Director General apparently participated in the meetings as a full member and implicitly as the head of the meeting. Directors would want to make the difficult step to becoming either deputy or full Director Generals and to do this they required the right connections and also the approval of their immediate superior.

The management in 2000 apparently finally used the reorganisation tactic in an attempt to regain control of the DG. The Policy Group and Staff Meetings, effectively policing procedures, had not managed to stop the legislation that was still being produced by amongst others Policy Networks. It had become steadily harder to get proposals through the Meetings but still the existence of networks allowed the Desk Officers and their Heads of Unit to ensure that some legislation was accepted. A major reorganisation was carried out in 2001 which as the tables show involved half the management in the DG being re-deployed or their units re-named and given new tasks. Although the stated reason for the reorganisation was the 6EAP, the timing and form the reorganisation took would appear to support the view, namely that personnel reasons lay behind the reorganisation.<sup>64</sup> The fact that a couple of years later another major reorganisation took place, reversing some of the changes made in 2000 appears to reinforce the personnel issue motivation since the DG was still following the 6EAP at the time of the second major reorganisation. Troublesome units were allegedly dismantled and, for example, the Waste Unit was given a new head, a new Director, made answerable to the Director General himself and allocated to a new member of the Cabinet; the DG hierarchy for the Waste Unit Desk Officers was utterly changed. This reflected the divided nature of the apparently rigid hierarchy which had to be totally removed and changed. Evidently some elements of the previous hierarchy had been themselves unwilling actors in the Director General's attempts at curbing the Waste Unit. Now the highest levels of the hierarchy for the Waste Unit shared Scottish nationality. This might have been an accident but one source, at least, thought it was obvious that the Director General had manoeuvred a Scottish Cabinet member into the position he then filled, and that the Director shared the same nationality.<sup>65</sup>

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<sup>63</sup> Interview with MEP

<sup>64</sup> Interviews with Commission Officials: DG ENV and Interview with MEP,

<sup>65</sup> Interviews with Commission Officials: DG ENV



Part of the reorganisation allegedly saw new potential networks being formed within the hierarchy and allegedly between other DGs and DG Environment;<sup>66</sup> networks which favoured the policy style and content of the new Director General. Certainly less legislation appears to have been produced as the result of the changes but equally few voluntary agreements with industry took place, which was what the Director General had favoured. Voluntary agreements were outside the remit of the co-decision procedure with the EP and by promoting this policy tool at the expense of the legislative option the Director General and the Commission were side-stepping the encroaching new powers of the EP. This approach could well have been in the interests of the UK and other MSs like France, which had had a bruising face down with the EP over environmental issues.<sup>67</sup> The re organisation could then be seen as a direct attempt, similar to that of the Policy Group Meetings, to redirect the nature and content of legislative proposals.<sup>68</sup> By shuffling dossiers and individuals in addition to the meetings, the hierarchy seemingly wanted to ensure a change in textual content and the whole legislative input. The Waste Unit was described as the motor of the DG, the Director General allegedly effectively applied the brakes to the unit and the DG as a whole,<sup>69</sup> slowing down the productivity of the Desk Officers by every means possible.

### 4.3 THE RESULT

The DG was stated by the EEA (European Environment Agency) to have reached a low point in 2001, it was said to be; 'demotivated', with positions even more entrenched than ever.<sup>70</sup> DG management and staff turnover reached 25%-30% or higher over this period which has meant that in one unit after four years only one member was left of the original team. The impressive turnover of management and staff was matched by an equally rapid turnover in Commissioners with five Commissioners in eleven years. This led to the following comment, "as a result of these disruptions, 'DGXI's internal influence waned . . .'"<sup>71</sup> The numbers of promotions fell gradually since 1998 apart from promotions to A7 which fell dramatically in 2001.<sup>72</sup> Promotions within the DG to higher management levels were almost non existent, (1 a year). About one third of the management (.33) changed in some form (from one unit to another, or one policy area to another) on average from one calculating period to the next approx every 8-10 months. The ratio of unchanged staff to changed staff for five periods are as follows: 33/19, 34/11, 25/25, 42/13, 36/17. For DG Competition, during approximately the same period, the figure for management change is about one fifth (0.21) with ratios as follows 36/5, 25/19, 37/5, 34/7.<sup>73</sup> The figures show a considerable difference with DG competition management being more stable for the same period. It should also be noted that whereas DG Environment had three Director Generals from 1997-2003, DG Competition had only one.

The high turnover of both staff and management in the DG as indicated in the tables, was matched by a predictable decline in trust and a slow down in productivity.<sup>74</sup> The reshuffling resulted in what was described as an efficiency black hole<sup>75</sup> of a couple of years, as officials had to learn each other's expertise afresh. The nature of the Commission legislative process

<sup>66</sup> Interviews with Commission Officials: DG ENV

<sup>67</sup> Interview with MEP

<sup>68</sup> *ibid*

<sup>69</sup> Interviews with Commission Officials: DG ENV

<sup>70</sup> Interviews with EEA Officials

<sup>71</sup> See note 34 Grant; Mathews; Newell (2000) p.25

<sup>72</sup> This and the following figures are included in the tables at the end of the article

<sup>73</sup> See tables at end of chapter

<sup>74</sup> Interviews with Commission Officials: DG ENV

<sup>75</sup> *ibid*

and its slender staff resources made this method of policy direction via Policy Meetings and reorganizations unwise both institutionally as the loss of in-house expertise and good will with the Policy Networks weakened the Commission vis-à-vis MSs and lobbyists and with regard to its own performance. Unless of course a slow down and some inefficiency could be argued to have been acceptable for Commission organizational survival reasons. The inefficiency was hardly useful for enlargement of the union.

Given the disparity between the internal assets of the DG: knowledge, expertise and dossiers in the hands of the Desk Officers and Heads of Unit and final decision making prerogatives in the hands of the Directors, communication and trust between the managers and their staff and between the management themselves were vital for the organisation to function. The absence of these would lead to informal and ad hoc methods of management being used instead. This is seemingly what happened with seemingly innocuous meetings intended for management co-ordination developed into effective filters for policy proposals. The meetings themselves would have been unnecessary if trust and normal management staff relations had been in place and prevailed. Then early discussions could have occurred between Head of Unit and Directors in which information regarding proposals could have been exchanged and legislative proposals dropped very early on if necessary. The alleged absence of effective horizontal communication between the Directorates and sometimes, implicitly between units, and management and Heads of Unit and staff resulted in months, sometimes years<sup>76</sup> being spent developing legislative proposals, and networks which were later summarily dropped at the Policy Meetings. This inefficient usage of scarce Commission resources and MS expert capacities seemingly owed a lot to lack of communication, and trust. And yet it also likely that it was deliberate, the DG or elements of it were to be braked, reined in hard, and this is exactly what happened resulting immediately in inefficiency.

The motives of the Policy Network in DG ENV can be seen as highly motivated and highly idealistic. Indeed it might seem fair to consider its members to have been the true environmental idealists who refused to allow this great good, the environment, to be abandoned for economic goals. The network was true to the founding goals and motives of the DG<sup>77</sup> which had as an organization been changed from its environmentally activist line. According to Mintzberg resistance is pretty inevitable in such a situation.<sup>78</sup> It was also true to the founding goals of the Commission as a whole in driving forwards integration and expanding the European sphere wherever possible. The problem for the network was that the times had changed and that the emphasis in the EU and the Commission as well was on economic growth. From the stand point of the then DG hierarchy and to an extent the Commission, the network appeared an extremely resilient group which generated legislation which was no longer in mode and resisted reform and controls. It is hard not to see something heroic in the network that stood up for the old values and lost out.

The DG was and is to some extent an organisation made up of many smaller organisations each with their own agenda.<sup>79</sup> It was a divided organisation in which there were several major cleavages: between the old guard from Euroatom and the newer more environmentally active officials; between those who favoured the proscriptive legalistic approach and those who favoured de-regulation; between the main stream officials and the idealists; between the new

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<sup>76</sup> Interviews with Commission Officials: DG ENV it can take 9 months for an official to master a policy dossier/proposal.

<sup>77</sup> See note 1 Cini (2000)

<sup>78</sup> Mintzberg H (1989) *Mintzberg on Management: inside our strange World of Organizations*, New York: Free Press p. 291. 'Members of an organisation who remain true to the norms of its traditional ideology will not take kindly to administrative types trying to routinize it, to enhance their own formalized power at the expense of the established system of beliefs. Furious confrontations can be expected.'

<sup>79</sup> See note 40 Mazey; Richardson (1997) p. 182



and the previous Commission ideologies.<sup>80</sup> Furthermore there were and are alleged to be divisions within the management between those who saw the Commission as a closed system detached from the outside world, in which success was rated at getting policies adopted by the Commission, and those who focused on the Union as a whole and aimed to produce policies beneficial for it.<sup>81</sup> Lastly there were allegedly several serious differences in the personal managerial styles of the Directors and Heads of Unit and between the views of the Commissioner and the Director General.<sup>82</sup> However, the DG did not see a uniform centrifugal process occurring, but rather some departments which held to a previous 'ideology' and method of working, and the management which do not share this approach. The House of Lords commented on this in their report which noted the un-coordinated approach within the DG.<sup>83</sup> The struggle was therefore more between management and certain officials and their departments for control of the 'soul' of the organization.

#### 4.4 BUREAUCRATISATION OF THE DG

In some ways the alleged desire of the UK Director General to slow the DG down and make it more industry friendly was tolerated by the Commission, which itself wanted to adopt a lower profile and see arguably a reduction in legislation, infringements and confrontation with the MSs, sectorisation, and more emphasis being placed on economic issues. That said, the UK Director General left soon after the reorganization and was replaced by another who was said to be '... very loyal to the Commission and... doesn't have a big political agenda more a technical agenda.'<sup>84</sup> There were changes in Directors, and generally more allegedly detailed management, "micro management."<sup>85</sup> There was said to be more of an emphasis on procedures and the DG was centralized.<sup>86</sup> The following quotation illustrates this, 'The time doing bureaucratic procedures has doubled, now it is 70% of work, 5 years ago it was much easier, now 10 times more checks are needed and half of the time spent on procedures could be cut.'<sup>87</sup> Delegation allegedly went down and so did efficiency and the DG slowed even further.<sup>88</sup> Desk Officers apparently had less discretion than before.<sup>89</sup> The trade off between bureaucratic control and efficiency can be explained as follows:

'... official codes, rules, and procedures that typify formal structures often prevent individual initiative, forbid the deletion of unnecessary steps, inhibit the acceptance of risk and responsibility for terminating useless operations and impose other more or less similar inhibitions. ... all these actions have the effect of preventing actions that could increase efficiency.'<sup>90</sup>

And yet despite all the bureaucratisation that took place in the drive to bring the DG into the Commission mainstream, it was stated that a new dynamic was finally coming to be evident in the DG and that it was gradually seeing an improvement in its situation (2003-2004) and an

<sup>80</sup> Approaches to dealing with its tasks and more fundamentally the nature of its tasks.

<sup>81</sup> Interviews with Commission Officials: DG ENV

<sup>82</sup> *ibid*

<sup>83</sup> See note 13 House of Lords session 1997-98

<sup>84</sup> Interview with MEP

<sup>85</sup> Interviews with Commission Officials: DG ENV

<sup>86</sup> *ibid*

<sup>87</sup> *ibid*

<sup>88</sup> *ibid*

<sup>89</sup> *ibid*

<sup>90</sup> Breton and Wintrobe *The Logic of Bureaucratic Conduct: An Economic Analysis of Competition, Exchange, and Efficiency in Private and Public Organization*. New York, NY: Cambridge University Press, 1982 p.32

increase in its activity again.<sup>91</sup> In part this was possibly due to changes in the senior management of the DG and the new Commissioner. The period of bureaucratization probably served a positive purpose, from the Commission's perspective; it seemed to reduce Policy Network activity, slowed the DG down and made it less of a threat to the MSs. The quiet understaffing of the infringement's section of the DG seems to support this Commission goal of confrontation reduction with the MSs. To some extent, periods of bureaucratization also seemed beneficial in the removal of MS influence and moderating of DG internal politics; this is discussed in the findings chapter under the Mintzberg section.

#### 4.5 THE KINNOCK REFORMS

A portion of the bureaucratization which was put into effect in the DG was due to the Kinnock Reforms of the Prodi Commission. The reforms were motivated in part by the desire to prepare the Commission for the enlargement in 2004. The white paper which the college adopted in 1.3.2000 contained the Kinnock reforms. In it the Commission stresses that it wants to be 'strong and independent and effective' and firmly in the middle of the EU. To achieve this situation again, the reforms aimed to reduce the number of staff-involved project management (around a half of total staff) and so to restore the Commission to 'its institutional role as the motor of European Integration'. Staff would be returned to the core functions of 'policy conception, political initiative.' Much along the lines of the modern civil service the Commission declared that it wanted to form a culture founded on service. Codes of conduct would be made with the EP and the public by allowing them easier access to documentation.

In order to achieve the above the Commission introduced Activity Based Management to 'integrate priority setting and resource allocation across the organisation, enable activity to be monitored from the centre, and make management and evaluation easier at all levels.'<sup>92</sup> To improve activity planning and use of resources and to ensure that they were more policy driven, the SPP was introduced, Strategic Planning and Programming. Delegation of policy management activities and decentralisation to MS public bodies was promoted. Furthermore 'performance-oriented working methods would be introduced throughout the organisation, decision-making and administrative procedures simplified, inter-service co-ordination, and the keeping of archives improved, progress made towards the e-commission, and quality management techniques introduced.'<sup>93</sup>

The reforms also affected financial management quite seriously. A new financial regulation was introduced which came into effect 1.1.2003. The functions of auditing and financial control were separated and three organisations were set up to implement this. The Audit Progress Committee was to monitor the auditing of the Commission. The Internal Audit Service was to control the DGs 'management and control systems' and to provide them with advice. The Central Financial Service was to 'define financial rules, procedures, common minimum standards that departments must observe in their internal controls and advising the financial units created in each DG.'<sup>94</sup> Activity Based Budgeting was introduced to 'identify the administrative resources necessary for each budget line.'<sup>95</sup> A charter was drawn up on the duties of authorising officers with 'standards for internal monitoring and general guidelines on finan-

<sup>91</sup> Interviews with EEA Officials

<sup>92</sup> Kassim, H. *A historic accomplishment: The Prodi Commission and Administrative Reform* in Dimitrakopoulos, D. (ed) *The changing European Commission*. (2004) Manchester, Manchester University Press. p.45

<sup>93</sup> *ibid* p.45

<sup>94</sup> See note 92 Kassim, H. in Dimitrakopoulos (2004) p.49

<sup>95</sup> *ibid* p.48



cial circuits and the role of financial units.<sup>96</sup> The convention on the Protection of the Community's financial resources came into force in 2002 which aimed to deal with fraud.

Staff performance and management were an important element of the reforms. One important element of the reforms was the intention that merit be rewarded and seen to be rewarded. Staff were to be appraised on a yearly basis with their line managers performing this task. The aim was to reward merit. Promotion was intended to reward merit more. This called for a radical change in the intransparent promotion methods that had been followed by the EU. Mobility was encouraged and for those with sensitive posts owing to handling financial transactions, then mobility was to be more strictly followed. But in general all staff were expected to move about every four to five years. Middle management in particular Heads of Unit, saw their jobs 'redefined with management requirements specified and training provided, with trial period to ensure equal opportunities, professional rigour, disciplinary procedures, whistle-blowing rules, and overhaul of regime for temporary agents.'<sup>97</sup> The staff regulations were changed as part of the reforms to allow for a new career structure that combined a reclassification of officials with a simplified salary scale. Rules were decided on concerning staff discipline and whistle-blowing. Recruitment was to be changed and procedures improved. Likewise training was to be optimised and officials given ten training days a year. Amongst top officials an attempt was carried out to weaken the amount of MS influence that had accrued, 'the main objective was to end the system of national flags'<sup>98</sup>. Recruitment to the top positions was made more open and the length of time that the position could be occupied by the same person limited.

The change to the promotion system was called CDR or Career Development Review. The reform aimed to make promotion more transparent and fair by giving more power to Heads of Unit to decide which of their staff should be promoted, and also to rationalise the system by only allocating a certain number of points to each Head of Unit which he could then give to his officials. The Heads of Unit had to have their decisions approved by their Director which was seen to be more a double checking mechanism than anything else. This method removed the oddity under the old system which saw most officials being automatically promoted (or having their salaries increased) year after year regardless of performance, for the obvious reason that few managers are going to deliberately prevent an official from being promoted when the promotions are limitless. However, inflation meant that under the old system promotions or rather performance related increases in salary were seen more as a right than due to performance. That change was necessary can be seen in the fact that several officials when interviewed, expressed the view that it was often impossible to understand why certain individuals were promoted and others had their salaries improved and that the whole process was a 'paper exercise.'<sup>99</sup>

Heads of Unit are the most important layer of management for the workings of the Commission, in particular for the generation of legislation. They back up and support the Desk Officers in bearing the brunt of the labour of the Commission. Often they are severely over worked and have to provide guidance in several different policies as well as manage personnel issues. Management skills have often played a minor role in the work of the Heads of Unit, a too minor role probably. Under the new system it appeared that those closest to the Desk Officers would be given the possibility to reward them according to their merit. This was a positive idea but it would mean a large increase in personnel related work by the Heads of Unit

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<sup>96</sup> See note 92 Kassim, H. in Dimitrakopoulos (2004) p.50

<sup>97</sup> *ibid* p.53

<sup>98</sup> *ibid* p..54

<sup>99</sup> Interviews with Commission Officials: DG ENV

and often this is time that they can ill afford to spend, if the heads have less time to fight for their units in the confrontational atmosphere of the Commission this could be detrimental to their work. However, leaving the more mundane aspects to one side the Heads of Unit were often the policy experts and instrumental in generating legislation and also heading Policy Networks. Turning them into personnel managers can only result in a loss of these skills. The same applies to the enforcement of merit throughout the organisation, it could show the desire to make the Commission into more of a Weberian bureaucracy and also to restore control over the promotion of staff and control of them to the top ranks of the Commission and away from Policy Networks, DG fiefdoms and MSs.

Any change in the promotion system in the Commission is closely watched by the officials themselves. One source stressed that officials were cynical about the reform and consider that, 'everyone is pretending it will work when it won't,'<sup>100</sup> any flaw in the reform would easily cast shadow over the reforms as a whole. It was difficult to compare "tightly" performance since there were 15 different approaches to management (due to there having being at least 15 different MSs and their respective cultures) it was hard at the best of times to arrive at a joint definition of performance. It was worrying but not very surprising to note that DG ENV, which has had a tortuous last few years, apparently chose to implement the reforms in a manner which came close to turning them, quite literally, on their head.

DGs were allocated a number of promotion points which they could award staff and the DG average had to be 14 otherwise a claw back mechanism existed which meant that a certain amount of internal coordination is necessary. However the DG allegedly chose to turn coordination into another hierarchical exercise. Instead of the Heads of Unit proposing the points they wished to see allocated to particular individuals and having them approved by their Director, the Policy Group Meeting took over the Heads of Unit's task and decided how the points were to be allocated with effectively no input from the Heads of Unit. In fact several Heads of Unit were said to have apologised to their staff for the way that the points had been distributed and stressed that their input had not been taken into consideration.<sup>101</sup> Given that promotion is an essential element of personnel management this rather throws doubt on the real intentions behind the empowerment of Heads of Unit to be such managers. Usually the Directors were said to have little knowledge about their staff let alone their work and yet they decided on the points. What was worse was that apparently after enquiries were addressed by some individuals to their Director regarding the point allocation, the Director was unable to explain what had happened which implies that the Policy Group somehow reached broad sweeping point allocations which bore no relationship to the individuals affected.<sup>102</sup> What had been intended to be a bottom up exercise has been turned into an arbitrary top down one. The need for coordination and confirmation by Directors of Heads of Unit decisions was seemingly used as an excuse to keep the old arbitrary system in operation, only this time staff were not necessarily being automatically promoted or seeing their salaries rising, frustration was the result. The appeal system was supposed to allow officials to discuss and negotiate their points with their management before they were fixed, under the new system this was not possible, once the points have been allocated it is too late for negotiations.

A further reform which was coming into force was that of mobility. Whereas before mobility was often not very high, now every official was expected to move to another position every four years, should they fail to do so this could be bad for their careers. Given the time it takes to learn about a policy dossier and to become fully functional, at least nine months, combined

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<sup>100</sup> Interviews with Commission Officials: DG ENV

<sup>101</sup> *ibid*

<sup>102</sup> *ibid*



with the absence of an archival system and the already high staff turnover in the DG, obliging the few that were still in their positions to move, removed whatever consistency that there was left in the units. It would also become harder for new staff to come to grips with the often highly complex details of dossiers, since they now had less people to turn to for advice and experience. Mobility was also expected of those in more senior positions which could well mean that Heads of Unit would also have to move. For an organisation which was dependent on expert knowledge of dossiers and individuals learning on the job, the chances are that productivity would decrease and efficiency with it. The problem would appear to be linked to the Commission on the one hand effecting a reform which gives greater leeway to the individual DGs whilst at the same time attempting to effect the reforms in a contradictory uniform manner.

The result of all the changes and reforms were delays. After receiving a proposal for a new policy which either a member state or NGO considered to be both topical and important for the community to legislate on, it could take the Commission up to three years to develop a response. An example of this was allegedly the Environmental Health dossier which owing to; 'heavy long winded procedures and delays,'<sup>103</sup> and general lack of expertise, was severely delayed from the point when the DG received several requests from MSs to the point at which a document was produced. Due to the delay in the Community-wide policy, many of the MSs and the NMSs decided to put the policy into effect within their own territories. The DG then apparently reached a decision and 'rushed' the policy through. Demands were placed on MS officials and NMS officials to attend thousands of meetings and working groups with a 2004 deadline. The demands were described as 'totally unrealistic' and they clashed with the policies which had been set up already in the MSs and NMSs. This placed an unbearable burden on the experts and officials in the states, that were simply too few to manage the vast work load at the best of times let alone when legislative duplication takes place.<sup>104</sup> This example was probably only one among many. Apparently this was 'typical' of the Commission, that it took a long time to prepare and respond and then rushed policies through sometimes too late as the agenda had moved on or the policies had already been put into force by the impatient states.<sup>105</sup>

In part the problem was also due to the fragmentation of the Commission. The need to negotiate every issue both inside the DGs and within the more fragmented Commission itself led to a 2 month inter-Commission discussion period being stretched to 12 months.<sup>106</sup> One reason for the delay was also the fact that the written procedure, whereby policy documents were submitted in writing to be commented on by other DGs before being adopted by the Commission itself was extended, and the more informal process of Chefs of Cabinets discussion of the issues in their own meeting was limited as a result. The latter process was allegedly less transparent and more open to lobbyists and MSs pressurizing their Chefs of Cabinet,<sup>107</sup> who were often directly placed in their positions by MS, and there are examples of legislation being radically changed during these meetings after rather obvious interventions by national lobbyists.<sup>108</sup> But the cost of less MS influence was delay and mountains of extra paper work.<sup>109</sup>

The new accountability procedures which were introduced as part of the reforms were another problematic area. Whilst accountability is important it seems to have been difficult to get

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<sup>103</sup> Interviews with Commission Officials: DG ENV and EEA Official

<sup>104</sup> Interviews with EEA Officials

<sup>105</sup> *ibid*

<sup>106</sup> Interviews with Commission Officials: DG ENV

<sup>107</sup> *ibid*

<sup>108</sup> *ibid*

<sup>109</sup> *ibid*

things done owing to the complexity of the present system. The over reliance of the Commission on complex paper controls has been commented on<sup>110</sup> and as the recent scandal involving Eurostat showed they had little effect.<sup>111</sup> The delays resulting, affected both policy making and also the enlargement process, with the Commission creating administrative capacity problems for the applicant states due to the late payments of PHARE (Poland and Hungary: Assistance for Restructuring their Economies) funds<sup>112</sup> and complex ISPA (Instrument for Structural Policies for Pre-Accession) payments.<sup>113</sup>

#### 4.6 THE ENLARGEMENT

Regarding enlargement and the importance of the DG in the process in 1996 Commissioner for environment Bjerregaard stated, 'asked whether environmental shortfalls alone would be enough to prevent CEECs from joining, Bjerregaard said "I am absolutely sure - yes"'. Officials suggested this wouldn't happen within EU she said a lack of coordination between bilateral and multilateral contacts was causing difficulties . . . for their part CEEC ministers complained that the Commission was inflexible and difficult to contact the Commission said it would amend some of this.'<sup>114</sup>

The enlargement process within the Commission appears to be similar from one DG to the next. Enlargement units were set up and effectively left to themselves to develop strategies both to prepare the applicant states to join and to prepare their DG to be ready to accommodate them. Whilst certain units had to work with the applicant states in the pre accession process, large portions of DGs did not have direct contact with the states concerned and therefore had little idea about what effects enlargement would have. The role of evangelising and spreading the message about the enlargement was left to the enlargement units. Exposure and training were the two approaches followed by the Commission with units being exposed to working with the applicant states and the latter being involved in Community programmes not involving legislation. The training element was the competency of the enlargement units and their responsibility. Often they had to adopt their own strategies to ensure that their DG were fully informed. Staff levels in units can vary; DG ENV's unit was well staffed with between 22 and 25 staff members, which was curious considering that the average size of a unit is around 7. DG ENT's enlargement unit had a total of 17 staff members although the DG was responsible for three of the chapters of the *acquis* as opposed to the single chapter that DG ENV was responsible for. Staff turnover in the unit was very low when compared to that of the rest of the DG. In both DGs the first task of the unit heads was to win over the Director Generals to their side. The Deputy Director General of DG ENV took charge of the unit and poured resources into it and also insulated the unit from the reorganisations which occurred. In DG ENT the resources were not immediately available and the Director General had to be 'weaned' to support the unit. The unit had to make enlargement an issue within the DG and to adopt tactics to achieve this. DG ENV's enlargement unit did not appear to have been quite so pro-active maybe because the deputy Director General supported them from earlier on.

The DG appeared to have taken a strict line with the applicant states which maybe accounts for the change in their attitude from 1999 to 2000. The states were, prior to 2000, being regularly exhorted to make improvements in the field of environment and little progress was

<sup>110</sup> see OLAF chapter

<sup>111</sup> European Voice 11-17, 9.03 p.3

<sup>112</sup> Interviews with NMS Officials

<sup>113</sup> Interviews with EEA Officials

<sup>114</sup> European Voice CEEC environment ministers European Commission informal 19.09.1996 Vol. 2 No.34



made. After 2000 the tone was less negative. The reason for this change was due to the Commissioner putting pressure on the states during her visits and addressing the press and public and encouraging competition between e.g. Poland and Lithuania to close the chapter first.<sup>115</sup> The Commission allegedly threatened the states with the withholding of funds as the Commission had done with Greece, pre-accession funding might have been withheld if impact assessments were not carried out. DG Enlargement supported the DG in this and demanded to see proof of payments made, MSs were also supportive.<sup>116</sup> Detailed timetables were set up and technical consultations carried out, extensive transitional arrangements were agreed upon which are not dissimilar to those that were in force with MSs.<sup>117</sup>

It should at this point be stated that some authors have expressed their surprise and alarm at the speed with which the environment chapter was closed:<sup>118</sup>

“Knowing the enormous distance between the EC environment law standards and those of the candidate countries, one is astonished to see the ease with which the EC has been willing to close the negotiating chapter on environment, be it with considerable transitional periods, with nine of the candidates in 2001. It is very doubtful whether the majority of the enumerated candidates are really capable in terms of human resources, know how, and infrastructure of complying with EC environmental law. . One cannot escape the impression that the ‘negotiation dynamics’ may at times side-slip into ‘easy successes’ on paper but which may prove particularly difficult to achieve afterwards.”<sup>119</sup>

According to one source, an explanation for this may well be found in the package deals which were used by DG ENV in its negotiations. The bad deal which the applicant states received with regard to agriculture may well have been traded off against an easy deal with environment.<sup>120</sup> The high costs of improving the environment would rest with the states concerned whereas the costs to do with agriculture would have had to be paid for by the Community and in particular the MSs; for the Community the cheaper deal, in the short run, was to agree to close the environment chapter and thus benefit from a better deal in agriculture. It was hinted that the decision to close the chapter was a political one and not to do with the real state of progress within the states concerned.<sup>121</sup>

The general problems that the DG will face with enlargement are those connected with the over quick closure of the chapter and the failure to have carried out sufficient studies and projects in the years of the NMSs pre accession. It was a time of missed opportunities and the DG failed to invest while it could.<sup>122</sup> The DG allegedly had assessments made in 1999 on the NMSs which were supposedly the basis of its decision to close the chapter, oddly enough the information was kept secret and Desk Officers forbidden from discussing the finds with the EEA or anybody else, this was contrary to normal practice where the EEA would have been shown the reports. The suspicion was that the DG was all too aware that the information available may well have prompted some in the EEA to call for full appraisals and this might have led to the enlargement being postponed or at least the environment chapter.<sup>123</sup> The decision had been reached that it was to be enlargement at the date set and that nothing would be

<sup>115</sup> Interviews with Commission Officials: DG ENV

<sup>116</sup> *ibid*

<sup>117</sup> *ibid*

<sup>118</sup> Maresceau. M. *Pre-accession in The enlargement of the European Union* Cremona, M (ed) (2003) Oxford, Oxford University Press p.23

<sup>119</sup> *ibid*

<sup>120</sup> Interviews with Commission Officials: DG ENV and EEA Official.

<sup>121</sup> Interviews with Commission Officials: DG ENV

<sup>122</sup> Interviews with EEA Officials

<sup>123</sup> *ibid*

allowed to stop it. The result of rushing the closure of the chapter would, it was stated, be problems in the years ahead, particularly when the applicant states were full member states and demanding their rights.<sup>124</sup> The EEA had experienced the change in tone that could occur once states began to pay for the projects they were involved in. The DG could and should have involved the applicant states more fully from an earlier stage.<sup>125</sup>

The Commission and the DG unfortunately continued their own lack of integration into the enlargement process. Allegedly sectors enlarged and set up their own networks largely without coordinating with other sectors and their relevant DGs.<sup>126</sup> Many of these networks were not necessary as the information was already available. This led to demands being placed on the applicant states to provide experts to work in various sectoral networks which are often in part duplicating information already available, but the Commission departments are not communicating it to each other. An example of this problem was that Environment and Transport did not combine for funding in ISPA. Many of the networks in existence were unaware of each other, and thus reporting requirements could have and should have been streamlined. If this does not take place then the already over burdened administrative capacities of the NMSs were stated to be in danger of not being able to function.<sup>127</sup> The lesson these states learnt from the Commission was the opposite of sectoral integration, effective communication and strategic management. Rather the Commission would appear to have over relied on these states to make up for its own internal deficits and inability to communicate between DGs and within DGs.

The interviews carried out with NMS officials: in the DG itself, in the national ministries and in the permanent representations in Brussels revealed how the some NMSs experienced the enlargement and the DG. In general they seemed to have had a positive experience and considered the DG to have performed above average. Coordination between DGs was criticised<sup>128</sup> as were the DG management -Commissioner relations prior to the Commissioner removing the old Director General. Before this occurred there was considered to have been a problem with DG coordination and Communication with changes in direction happening. The less environmental direction of the DG was noted, the DG was said to have lost out to the other DGs. One NMS official commented on the perceived superiority attitude that the DG had shown to the NMSs with a Desk officer shouting at a NMS ambassador. The current DG was perceived to have become 'over centralized',<sup>129</sup> with micro management being a current problem.<sup>130</sup> There was a view that the DG had made 'administrative capacity' problems in the NMSs itself by ignoring the existence of perfectly adequate national legal provisions and requiring unnecessary additional requirements.<sup>131</sup> Regarding implementation, the DG was said to have become slower at dealing with bad implementation and infringements and the legal unit dealing with it was said not to be so 'tough' since the enlargement began; and to be giving warnings and trying to use other methods to avoid the infringement problem.<sup>132</sup> The aim was said to be to repeal problem legislation or to only have broad frameworks and to let the MSs fill in the detail.<sup>133</sup> The change over to using strategies rather than policies was noted to ameliorate the infringement issues. This was said to be a problem for the future as infringements have got worse and policies are easier to control than strategies particularly in the

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<sup>124</sup> Interviews with EEA Officials

<sup>125</sup> *ibid*

<sup>126</sup> *ibid*

<sup>127</sup> *ibid*

<sup>128</sup> Interviews with NMS Officials

<sup>129</sup> *ibid*

<sup>130</sup> *ibid*

<sup>131</sup> *ibid*

<sup>132</sup> *ibid*

<sup>133</sup> *ibid*



NMSs.<sup>134</sup> The NMSs were stated to have a problem in implementing environmental legislation and that the Commission did not want to impose burdens on industry in the NMSs, so the Commission goal was on more competitiveness and less environmentalism.<sup>135</sup> The NMSs were stated to be getting more exemptions owing to difficulties in implementation. The NMSs were also stated to be likely to want to have less environmental legislation if possible as they are more market oriented. The Cardiff goal of integrating environmental concerns into the broader EU policy approach was said to be 'dead'.<sup>136</sup> To be more effective the DG invited less MS officials and experts to management and advisory groups than before; it used to be two from each MS now only one same for advisory groups. The NMS officials were stated to be still not well informed, because they were simply new to the sector.<sup>137</sup>

In the Council NMS officials were said to often be silent and therefore not creating problems from an EU perspective.<sup>138</sup> Often this was stated to be because the NMSs consider that there is no point and they cannot alter anything, or because national ministries think in terms of Brussels giving orders and so the flow of communication is one way and finally the NMS officials on the Council often are not given instructions on how to vote.<sup>139</sup> Another problem is that there are not enough lobbyists yet in the NMSs putting pressure on the ministries and NMS officials in the Council to vote a certain way.<sup>140</sup> The problem of a lack of expertise in the NMSs and NMS officials on the Council was also mentioned as an explanation along with disinterest by the national ministries as environment was stated to seem 'too exotic' to be interesting.<sup>141</sup> Poland was said to be the most active in the Council and to claim to speak for all the NMSs. This is likely to change though, as after the enlargement took place the Czechs gradually tripled the number of their officials in the Councils.<sup>142</sup>

With regard to national ministries, these were stated to have a problem of lack of experts and political appointees being placed too far down in the civil services despite laws being passed to prevent this.<sup>143</sup> The ministries were stated to suffer from expertise gaps, with those with expertise belonging to the older generation and either leaving to take up better paid jobs in private industry or lacking English language skills.<sup>144</sup> The ministries were stated to be badly organised and their officials badly paid.<sup>145</sup>

## 4.7 CONCLUSION

We have seen that DG ENV seemed to present an interesting example of an extremely dynamic DG; on the one hand showing all the skills and missionary approach that is to be expected of the Commission during an expansive phase. Staff were granted considerable discretion to pursue the DG and the Commission's interests and to further legislation wherever possible. They did this with incredible skill and success as the large corpus of EU environmental legislation bears witness. Equally they were hard to control and formed very naturally into Policy Networks to do their work. Having said they were hard to control that presumes that

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<sup>134</sup> Interviews with NMS Officials

<sup>135</sup> *ibid*

<sup>136</sup> *ibid*

<sup>137</sup> *ibid*

<sup>138</sup> *ibid*

<sup>139</sup> *ibid*

<sup>140</sup> *ibid*

<sup>141</sup> *ibid*

<sup>142</sup> *ibid*

<sup>143</sup> *ibid*

<sup>144</sup> *ibid*

<sup>145</sup> *ibid*

there was a need to control them, although until the 1990s the DG, the Commission, the officials and the Policy Networks were all pulling in the same direction.

Once the dynamic phase was over and the MSs 'arrested' the Commission and slowed it down, the DG was likely to be targeted by MSs which desired to take it over and to effectively slow or stop its output. The UK in particular, but also Germany seem to have actively poured in officials to further the national perspective on the environment. The DG or elements of it gradually seemed to disintegrate into officials and units dominated by certain nationalities with certain perspectives and agendas. Faced by the dangers of more MSs with green agendas presumably interested in strengthening the German position in the DG and the environmentalists on the Council, the UK allegedly pressed to take control of the top management of the DG. Faced by ad hoc Policy Network methods to further the environmental agenda and to hold true to the previous DG culture, mission and ethos, combined with an environmentally friendly EP and Council, the senior management adopted seemingly ad hoc methods of management via the Policy Meeting and DG reorganizations to maximise their own discretion and slow the DG down. Although other factors were also no doubt in play the UK-dominated management were increasingly in line with Commission desires to be less environmental. The problem for the NMSs of the large amounts of environmental legislation to be absorbed was moderated by the disarming of much of the legislation via a softening of the infringement procedure and the move to less legislation. That said, the Commission and EU's desire to be more 'industry friendly' was considerably slower in coming than that of the DG and the same can be said for the weakening of the infringement procedure. The industry DGs were so weak that they were allegedly finally combined and staff numbers greatly reduced as will be seen in the DG ENT chapter. Those interviewed did not mention the above factors as causes of the changes but emphasised the role of the UK and the desire of the Commission to avoid any more conflict with the old MSs. Thus the basic model requirements seem to have been met in the DG. The Commissioners and Cabinets remained pretty environmentalist and Commission oriented and allegedly arguments and disagreements emerged between the management and the Commissioner which finally led to a new Director General.

The real bureaucratization of the DG appeared to begin in earnest with the new Director General and resulted in a slow down but also less conflicts internally. Desk officers like Heads of Unit were allegedly being suppressed to an extent, and power going to the top ranks in a systematic manner. Finally the DG seemed to have been made mainstreamed and this element of the Commission fragmentation into sectors moderated. That said the DG was stated to have gradually become more dynamic again, very much as the model would expect. The desire to downplay infringement policy and its legal role and to appear more a normal bureaucracy was shown in the chapter and supports the notion of the Commission 'hiding' for a period, gathering its forces for the next integratory drive.

One last point which the case study showed, was how policy and policy changes in the Commission were made by reorganizations. Policies were so bound to individuals that it was only by removing the individual from their position that any change in policy direction was possible. This seems to be proof, if proof were needed, that Policy Networks were in action, particularly when combined with the fact that no change or reform in the approach to environmental policy was possible until the DG was reorganized and finally also bureaucratized. So long as the individuals concerned were in a position of power in the DG and so in the Policy Network they would have the power to decide policies regardless of what management wanted.

Table of management posts between 1998-2003 DG Environment



	10.1998	06.1999	01.2000	02.2001	11.2001	11.2002	03.2003
Unit number	24	23 (-2)	23	24(1-audit)	24 (Audit)	24 (1)	26 (audit)
Directorate number	5 (1)	5(1)	5(1)	5(1)	5(1)	5(1)	6(1?), 4 new Directorate titles
Acting managers		3	1	1	2	1	7
Unchanged managers		33	34	25 (similar job)	37	42	36
Manager transfers		4	2	9	3	2	5
Vacant posts	6	6	1	6	2	1	3
New managers		6	7	8	5	5	2
Promotions				1	1	1	
New titles for units				10			3
New unit title but same contents/moved Directorate				4			4

Staff figures and promotions real rate of promotion: 1998-2003						
Promotion to the grade	1998	1999	2000	2001	2002	2003
A4	16.65	18.94	17.05	14.68	14.39	
A5	24.52	25.69	24.32	23.34	24.88	
A6	28.88	28.15	29.69	27.56	27.13	
A7	65.36	60.33	79.45	37.25	53.44	
Overall staff figures	505	517	374	521	543	544
External staff (END)figures as part of the above	50	52	49	55	58	52
Temporary staff figures	-	-	20	17	14	10

Table of management posts between 1998-2003 DG Competition					
	03. 1998	01.1999	01.2000	03.2001	2002-3
Unit number	29	28	28	28	30
Directorate number	8	8	8	8	8
Acting managers					
Unchanged managers		36	25	37	34
Manager transfers		2	6	1	2
Vacant posts	9	5	1	5	6
New managers		2	11	4	4
Promotions		1	2		1

## 5. THE EUROPEAN ENVIRONMENT AGENCY

### 5.1 INTRODUCTION

We have looked at the EU – Commission cycle from the perspective of OLAF and one of its DGs. The following case study offers us the perspective of an organisation not overly dissimilar to that of OLAF. Whilst OLAF offers us organisational insights on the Commission as a whole and less on individual DGs the EEA provides us with the opportunity to assess a DG at work. Thus the case study to be presented will allow the reader to consider both the DG and the Commission as whole in a clearer light. Quite apart from the EEA's use as a tool to assess the DG it is also an interesting organisation in its own right.

The agency resulted from a European Council request made in the Rhodes declaration asking for a European approach to environmental matters.<sup>1</sup> The Commission responded with a proposal for the creation of the European environment agency (EEA) in July 1989.<sup>2</sup> Pressure was being applied on the Commission by the EP's Environmental Committee and by MS environment ministers both of which wanted improved information to allow them to carry out their tasks effectively. A task force was set up within DG Environment<sup>3</sup> in which 25 staff members were involved.<sup>4</sup> The director was appointed in June 1994 and he immediately pushed for the agency to be move as quickly as possible to its new location in Copenhagen. Of the 25 staff members only 3 were transferred to the new agency<sup>5</sup> as the director wanted a clear break with DG Environment and real independence for the agency as was required under the regulation.<sup>6</sup> The regulation held seeds for future problems namely in the nature of the work<sup>7</sup> and its relationship to the Commission.<sup>8</sup> As did the EEA mission statement based on the regulation in which the EEA stated it would aim to provide "timely and targeted" information to policy making agents and the public.<sup>9</sup> The staff started off as 6 officials in 1994, by 1996 there were 50 people working at the EEA and by 1997 there were 75 staff members and the budget was 16.9 ECU,<sup>10</sup> 2003 there are 100 staff members and a budget of 25 Million Euros,<sup>11</sup> the staff numbers will soon reach 120.<sup>12</sup>

The agency was designed to be at the centre of the European Environment Information and Observation network (EIONET). The network consists of European topic centres and 18 National focal points, 124 National reference centres and 334 main component elements.<sup>13</sup> All the present MSs of the EU are members of the EEA and represented on its management

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<sup>1</sup> EEA, history in short EEA website. [http://org.eea.eu.int/documents/ar1997/ar97\\_history.html](http://org.eea.eu.int/documents/ar1997/ar97_history.html)

<sup>2</sup> *ibid*

<sup>3</sup> *ibid*

<sup>4</sup> Interviews with EEA officials.

<sup>5</sup> *ibid*

<sup>6</sup> See note 1 EEA, history in short EEA Whereas the Agency should be granted legal autonomy while maintaining close links with the Community institutions and the MSs

<sup>7</sup> *ibid* Whereas the Agency should cooperate with existing structures at Community level to enable the Commission to ensure full application of Community legislation on the environment

<sup>8</sup> *ibid* Article 17. The staff of the Agency shall be subject to the Regulations and Rules applicable to officials and other servants of the European Communities. The Agency shall exercise in respect of its staff the powers devolved to the Appointing Authority. The management board shall, in agreement with the Commission, adopt the appropriate implementing rules.

<sup>9</sup> *ibid*

<sup>10</sup> *ibid*

<sup>11</sup> EEA presentation can be viewed at <http://org.eea.eu.int/organisation/presentation/slide14>

<sup>12</sup> Interviews with EEA officials

<sup>13</sup> *ibid*



board, as is the Commission, and the European Parliament (EP) has two specialists to represent it. Interestingly several non MSs are also members of the agency, including Norway, Iceland and Lichtenstein and the NMSs of the soon to be enlarged Community. The inclusion of the NMS is of particular importance to this article as it represents the first institutional enlargement of the Community institutions and thus can offer both experiences and insights into the process of enlargement and how it affects Community institutions as well as how it affects the NMSs.

The EEA has developed its own aims over time as is shown in their changing goals, at first it stated that its aim is 'to set up and manage a European information and observation network and ensure the dissemination of comparable information.'<sup>14</sup> This modest aim was expanded and narrowed at the same time in their 1997 mission statement, 'The mission of the EEA is to deliver timely, targeted, relevant and reliable information to policy makers and the public, to support the development and implementation of environmental policies in the Community and the MSs.'<sup>15</sup> By 1997 the EEA was looking to be involved in policy making by choosing which information to provide (having the power to choose which information is provided is a basic source of bureaucratic power) and it is likely that the EEA was sending a message to DG ENV which understood what was implied all too well. The DG had after all developed from being a loose group of officials simply providing information, much like the EEA, into the comparably speaking bureaucratic giant that it is today.

The EEA has produced several seminal works which have now been accepted by the EU like the EEA's publication 'Europe's Environment: The Dobris Assessment' (1995). This was an important document which was perceived to be a success. That said the main customer of the EEA, namely the Commission and in particular the DG ENV was apparently often neither impressed by the quality of the reports nor their timing.<sup>16</sup> The DG wanted accurate information, presented on time and as requested and it was not satisfied with the results.

During the first period of the EEA's existence it was said to have faced several difficulties some of which are typical to Community institutions and some which were due to the difficult relationship which the Commission has with some organisations with which it has to work. In 1998 it faced a budget freeze, which led it to state that it would be unable to carry out some of the tasks requested of it. The EEA saw little prospect in 1997 of an improvement in its resources but as indicated above, budgetary problems and scarce resources are common complaints in the Community institutions. The EEA has apparently had special problems vis-à-vis the Commission in terms of its desire to evaluate policies and not just to provide information. According to the DG this is because the agency expected to have had more power than they in reality received<sup>17</sup> and that they are therefore trying to expand their competencies into DG territory. The EEA considered that their task as laid out in the regulation required them to evaluate policies and to inform the public as well as the Community institutions accordingly.

That said it is also noticeable that the EEA has proven to be resourceful in using its right to locate other financial sources to allow it to expand. In particular it turned the enlargement process to its advantage both financially and in terms of staff.

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<sup>14</sup> Grant, W, Mathews, D, Newell, P, *The effectiveness of EU Environmental Policy* (2000) Basingstoke, Macmillan Press p. 32

<sup>15</sup> *ibid*

<sup>16</sup> Interviews with Commission Officials: DG ENV

<sup>17</sup> The EP wanted the agency to be able to field environment inspectors.

## 5.2 THE EC TREATY, THE REGULATION AND THE EEA

Examination of the EC Treaty shows the potential need for the EEA as a provider of information. This, its main task, and its role within the Community institutional structure and policy making cycle are shown in the following passage, 'Ensuring practical implementation is a much more difficult task since the Commission does not always have all the relevant information and has no inspectorate able to collect it. The Commission is therefore dependent for its information on those reports required under directives and on other sources including complaints made by the public. The EEA should be able to contribute as its tasks include providing "objective information necessary for framing and implementing sound and effective environmental policies" and drawing up expert reports which the Commission can use "in its task of ensuring the implementation of Community legislation."' <sup>18</sup>

Article 95 § 3 states that, '... environmental protection ... will take as a base a high level of protection, taking account in particular of any new development based on scientific facts'. One of the new directorates in the EEA was set up with just this task in mind, and as an organisation run by scientific specialists it is in a better position to keep up with scientific advances than the Commission, which has long had a reputation for having to import factual information from MS experts, industry and NGOs. <sup>19</sup> The right of MSs in § 5 of the same article to use the latest scientific evidence to justify taking national measures to protect the environment, underlines the need of the Commission to have independent sources of information to allow it to make an objective Assessment. Article 174, § 2 states that the Community should aim at, 'a high level of protection taking into account the diversity of situations in the various regions of the Community.' The network EIONET (European Environment Information and Observation Network, coordinated by the EEA) provides just such information, and it is hard to imagine how this article could be given any useful effect without an adequate source of information as is stressed in § 3 as well. It states that the Community shall, in preparing its policies, take account of, 'available scientific and technical data, environmental conditions in the various regions of the Community, the potential benefits and costs of action of lack of action.'

The agency began life as Council Regulation 1210/90 of 7 March 1990 <sup>20</sup> amended by (EEC) regulation number 933/1990 and Council Regulation (EC) No 933/1999 of 29 April 1999. <sup>21</sup> Whilst most of regulation has proven to be durable, in that the amended version still contains the majority of the original largely unchanged, the vagueness of some of the articles has led to considerable lack of clarity regarding competency, scope of tasks, priorities and resources. In particular DG ENV and the agency have had difficulties as a result of the regulation; this is to some extent reflected in that Articles 2, 3, 4 and 8 have been modified quite significantly. Article two is of particular interest as the different positions, conflicts and interests of and between the institutional players can be followed in the history of three §s from Article 2; the EP is an institutional supporter of the EEA. The original Article 2 §'s were as follows:

Art 2 "ii) to provide the Community and the MSs with the objective information *necessary* for framing and implementing sound and effective environmental policies; to that end, in particular to provide the Commission with the information that it needs to be able to carry out suc-

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<sup>18</sup> House of Lords session 1997-98, Select Committee on the European Communities, Second Report. *Community Environmental Law: Making it work* (1997) p72

<sup>19</sup> *ibid*

<sup>20</sup> Eur-lex [http://europa.eu.int/smartapi/cgi/sga\\_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31990R1210&model=guichett](http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31990R1210&model=guichett)

<sup>21</sup> *ibid*



cessfully its tasks of identifying, preparing and evaluating measures and legislation in the field of the environment.”

Art 2 “(iii) to record, collate and assess data on the state of the environment, to draw up expert reports on the quality, sensitivity and pressures on the environment within the territory of the Community, to provide uniform assessment criteria for environmental data to be applied in all MSs. The Commission shall use this information in its task of ensuring the implementation of Community legislation on the environment. Article 2 vi) to ensure the broad dissemination of reliable environmental information. In addition, the Agency shall publish a report on the state of the environment every three years”<sup>22</sup>

The Commission’s preferred amended version of the regulation began by replacing the; ‘necessary’<sup>23</sup> (put in italics) with; ‘they require,’<sup>24</sup> thereby emphasising the Commission’s view that the EEA should be there to follow its requirements, a view which the EP rejected with its comments to the Commission’s version rejecting the ‘they require’<sup>25</sup> in favour of the original ‘necessary’<sup>26</sup>; the amended regulation contained this wording.<sup>27</sup> A paragraph was added and the Commission version stated, ‘The Agency shall assist . . . as required by the Commission,’<sup>28</sup> the tone is imperative and contains little regard for the agency’s autonomy and management which produce a multi-annual work programme and set their own priorities. The EP comments on this were a clear rebuke to the Commission and the final version of the regulation supported the EP, ‘In accordance with its current multi-annual work Programmes . . . the agency shall assist . . . either on its own initiative, or as required by the Commission.’<sup>29</sup> Over and above these corrections the EP underlined its disapproval with two extra paragraphs, ‘The Commission shall in general seek to cooperate with the Agency in cases where appropriate information can be provided by the Agency to support Commission initiatives or implementation of acts,’ and, ‘Such requests should in normal circumstances be in line with the Agency’s approved working programmes.’<sup>30</sup> The EP effectively rebuked the Commission by placing an obligation on it in much the same manner as the Commission had attempted to do to the agency. The amended version of the regulation contained no mention of the Commission’s requirement.<sup>31</sup> Instead elements of the EP’s comments were included, with mention made of the need to coordinate all requests made by MSs with the multi-annual programme of the agency.

Another duel of words apparently took place between the EP and the Commission over § three. The Commission continued following its desire of making the agency into a provider of environmental information as required and nothing else. The EP accepted the idea of the agency, ‘establishing a repository of information on the environment,’<sup>32</sup> as contained in the Commission’s version but then added that the information should be used by the Commission not only in the ‘implementation of Community legislation’ but also in its ‘enforcement.’<sup>33</sup> The record of the Commission in the area of environmental legislation enforcement was less than optimal and the requirement that the ‘repository of information’ should be more directly involved in enforcement would have been less than welcome to the Commission given its deli-

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<sup>22</sup> See note 20 Eur-lex

<sup>23</sup> *ibid*

<sup>24</sup> *ibid*

<sup>25</sup> *ibid*

<sup>26</sup> *ibid*

<sup>27</sup> *ibid*

<sup>28</sup> *ibid*

<sup>29</sup> *ibid*

<sup>30</sup> *ibid*

<sup>31</sup> *ibid*

<sup>32</sup> *ibid*

<sup>33</sup> *ibid*

cate relations with the agency over policy evaluation. Furthermore the EP evidently desired for the repository to be freely available and not just restricted to the Commission and MSs.<sup>34</sup> But the amended regulation contained no mention about either the repository or the enforcement of legislation. The EP used again the same tactic of not rejecting the Commission's version but by adding onerous comments and requirements to it, the final amended regulation reflected its views.

The inclusion of the words, 'trends in and prospects for the environment', in Article 2 § 6, on the insistence of the EP, was a final solution to the agency's 'formal position' with regard to the evaluation of policies which has been a bone of contention between the agency and the DG since the former's inception. In the same paragraph the Commission wanted to require the agency to produce annual indicator reports, a point which the amended version of the regulation left vaguer and more up to the agency to decide on by stating, 'supplemented by indicator reports focusing upon specific issues.' Indicator reports can be of use for the EP when it requires to assess how effective Commission and MS policies are, the absence of any fixed time frame left the agency open to requests from institutions other than the Commission and it also ensured that there is potential administrative slack in this area which could allow the agency to exploit situations requiring a high profile report addressed directly at a specific issue: in essence the agency is given more leeway in its production of the reports.

### 5.3 EEA ORGANISATION AND WEAKNESSES

The agency consists of three main elements, setting aside the network, firstly there is the EEA management board, which is the main decision making body of the EEA and consists of 34 members, 30 from MS countries, 2 from the Commission and 2 from the EP. Secondly the EEA scientific committee which is appointed by the management board and is there to advise the board on scientific matters, it consists of 20 members, and lastly the administrative organisation itself.

This last consists of five directorates which are further subdivided into around 20 programme based sub units (excluding secretariats) which are broadly related to the activity they are involved in and the EEA's 'organisational environment' matching sectors. e.g. the 'air and climate change' sub unit will be dealing with these issues and all organisations or parts of organisations that are specialised in these fields in the EIONET for example. In DG ENV there will be a unit(s) which will cover these issues. The administrative organisation is headed by the executive director's office which is closely supported by one of the directorates, namely that of strategic development and international cooperation.

The issues dealt with by the agency are so complex and involve so many sectors that there was apparently a tendency within the agency for the specialised units to become absorbed only in their specialism. One of the major problems for the organisation has been allegedly the absence of a holistic approach to issues thus leading to inevitable compartmentalisation. Many of the present staff were recruited simply because they were scientific experts in a given field which was required by the EEA at that point in time, and there was a sense that they judged their performance on the basis of their sub units' activities and not the organisation as a whole. Recruits were often chosen due to specific sub unit requirements, which ensured that experts in the same specialism as that of the sub unit would be chosen and thus the

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<sup>34</sup> See note 20 Eur-lex



officials' myopic perception of their work was self perpetuating. Individuals were chosen for their scientific expertise and not for their inter-personal skills let alone any managerial ones. This led to the fragmentation of the organisation and the centrifugal forces which are present in some organisations became cemented into the EEA's administrative fabric. Many managers and officials apparently felt no sense of responsibility to anything occurring outside their sub units, or directorates. In effect the agency was simply the sum of its parts which seemed to be almost coincidentally working together. This point was commented on by both the evaluation reports on the EEA, which were made in 1999<sup>35</sup> and 2003.<sup>36</sup> Attempts at drawing sub units together did not prove to be over successful.<sup>37</sup>

A second obviously linked problem was the style of management which prevailed in the organisation, two words were used by some to describe this: intransparent and unpredictable. To some extent the complexity of the issues and the organisational environment in which the EEA was active means that it was difficult for the management to retain control over the activities of all the sub-units.<sup>38</sup> This was compounded by the fact that the management were often drawn from a similarly specialised background to their staff and often apparently lacked the global thinking that was necessary<sup>39</sup> to provide coherent long term organisational decision making. All too often management appeared to have been reactive rather than strategic, reacting, often negatively, to proposals agreed upon and made by their officials who had considered themselves to be fully empowered to enter such arrangements rather, than defining their staffs' roles clearly enough in advance and then ensuring that the line of responsibility was maintained. Examples were given of one official who had been given a budget to spend and after she had spent it was informed by her manager that she should not have spent it and the funds were reclaimed, and in another example a report was requested which was later ignored.<sup>40</sup>

An alleged absence of management skills in terms of leadership, coordination and simply presence was commented on. Sometimes the desk officers concerned were placed in the situation of having to choose which project to follow and how they wanted to implement it. Management apparently failed to provide the direction setting touch that is usually considered to belong to the management of organisations.<sup>41</sup> In part this was due to the similarity of academic and professional background<sup>42</sup> and a collegial atmosphere was perhaps inevitable. In some cases this is desirable as organisational theory would appear to indicate in the innovative type of company,<sup>43</sup> but in the agency it appeared to have resulted in a general lack of direction and an organisation drifting apart, if it was ever very much together. Further measures to encourage a more global approach to management within the organisation involved project management training, multi national team building training etc, but most of these training opportunities were of two day duration and it was unclear how successful they were.<sup>44</sup> A weekly newsletter with real information in was one attempt encouraged by the then executive director to reintegrate sub units into the organisation.

The organisational culture of the EEA was obviously a difficulty which has not helped the organisation to integrate its parts into itself. As is typical of Community institutions as a who-

<sup>35</sup> Evaluation report made by a management consultants firm in 1999

<sup>36</sup> EEA evaluation report August 2003 commented on by EEA officials

<sup>37</sup> *ibid* and Interview with visiting scientist to EEA, Fragmentation is still an issue in the 2003 report

<sup>38</sup> Interviews with EEA officials

<sup>39</sup> *ibid*

<sup>40</sup> Interview with visiting scientist to EEA.

<sup>41</sup> Interviews with EEA officials

<sup>42</sup> *ibid*

<sup>43</sup> *ibid*

<sup>44</sup> *ibid*

le, the individual is given great discretion and the desk officer level officials are often idealistic both to their sector and a European ideal. Often the culture of the organisation appeared to be little more than a diffuse 'esprit de corps,' a collegial atmosphere charged with energy engendered by a sense of adventure, shared background, idealism, and the inevitable elitism of belonging to a small band of selected individuals drawn from tough selection competition.<sup>45</sup> The initial culture of the organisation has been described as a 'pioneering' one in which a small band of officials who used 'guerrilla tactics' to achieve their goals in a 'work hard, play hard atmosphere' encouraged by the former executive director.<sup>46</sup> This is not unlike the Commission in its early stages when it too attracted similar descriptions and metaphors. The importance of the individual in the Commission process and in particular here, the EEA, has been stressed by both managers and officials at the agency.<sup>47</sup> Talented, professional individuals often of an idealistic nature, effectively unleashed and armed with some Community institution rights, missionary sense and allowed maximum freedom of discretion produced the dynamism of the agency and finally also some of the difficulties.

In the apparent absence of an effective culture to provide guidance, management resulted in an ad hoc affair with relaxed collegial solutions alternating with the abrupt, negative retraction of competencies and 'intransparent, unpredictable,'<sup>48</sup> reactive management mentioned earlier. There had allegedly been deliberate attempts to introduce a culture which was more formal and more directed to being focused on the activities the staff performed and audiences to be targeted. Activity and productivity for its own sake had to be changed to match the needs of the organisation and its customers. Before, the agency had what can only be described as an island mentality or as one of the officials interviewed said, there was a lack of reality in some of the organisation's activities. This was also allegedly reflected in the new corporate goals which the new director introduced,<sup>49</sup> the management were attempting to guide the development of a new 'corporate' culture in which intended projects were assessed and evaluated before being adopted and implemented.<sup>50</sup> This was very much in tune with the current cautious Commission and Community approach to policy making and project implementation.

The island mentality mentioned above resulted in and from the agency failing to communicate internally and externally. Information did not flow between the sub units and neither did it flow to the management. This had detrimental effects on the agency itself but it also had effects on the customers or audiences the EEA was supposed to be providing for. There was a very real sense that it was generating huge amounts of thick reports that were of little use to anybody and merely served to justify the agency's right to exist, an organisational cogito ergo sum, as if by producing large amounts of reports it gained influence. Again this is a common symptom in the Commission where productivity and quality in generated legislation is, or rather was, commonly perceived to be proof of worth. Many Community institutions were and are unaware of the EEA's existence and were therefore unable to gear its activities to their requirements.

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<sup>45</sup> 15,000 applicants for one position was not uncommon.

<sup>46</sup> Interviews with EEA Officials

<sup>47</sup> *ibid*

<sup>48</sup> See note 40 Interview with visiting scientist to EEA

<sup>49</sup> *ibid*

<sup>50</sup> *ibid*



mission was seemingly not capable enough of evaluating its own policies and required the EEA to assist it in this field and the EEA was in a position to provide the valid well researched reports which were required,<sup>60</sup> something the DG was not satisfied with until recently. The EEA also benefited from the EU desire to improve information flow and be less policy generating which was always the prerogative of the DG.<sup>61</sup> This point is discussed by Alan Butt Philip in his article on Environmental policy in the EU,<sup>62</sup> when he describes the decline in the 'command and control' methods favoured by the DG and Commission as a whole.<sup>63</sup> He notes that the number of legislation proposals as found in the Commission's work programme in 1996 was only two whereas in the 1980's it was 14 a year.<sup>64</sup> Although certain hard line views remained present in certain parts of the DG and pushed for proscriptive legislation as the only way forwards, the management had moved from this position and the legislative production from the majority of the DG slowed even further with the units that were not toeing the line being reorganised.<sup>65</sup> The EEA had the advantage of already being geared up to a less proscriptive method of environmental policy-making and have gained from the move to evaluating legislation more and giving value for money.

On the surface at least, the disputes between the two Community organisations appeared to have diminished. The rewording of the regulation was cited as another reason for the allaying of the dispute,<sup>67</sup> but as so often with changes in the law, did the change reflect changed reality or did it bring about the change itself? Leaving that to one side, the harmony seemed to be based on a clearer idea of task differentiation as the deputy head of the DG Environment cabinet said, when she described the EEA as providing an organisational memory<sup>68</sup> which the DG seemingly lacked owing to the extreme staff/management turnover, problematic archiving, problematic strategy<sup>69</sup> and organisational culture and frequent re-organisations,<sup>70</sup> whilst the generalists in the DG would concentrate on policy making. However the apparently commendable acceptance of task specialisation and institutional co-operation was over shadowed by their recruitment strategies. If the Community memory, and source of specialists was to be the EEA then it would have made sense for the specialists to be found in it, but the DG apparently actively aimed to increase its number of specialists as the 2002-2003 recruitment concurs showed. Specialist applicants were requested to apply for the posts,<sup>71</sup> not the generalists that might be expected for policy making positions. Whilst this hopefully reflected the desire of the Commission to produce quality legislation, it did also look curiously as if it might be duplicating the specialisation of the EEA and attempting to provide scientific expertise from its own ranks. The EEA, on the other hand, which was made up of specialists and this was their strong point, was seemingly looking to encourage recruits who were more policy based and to 'change staff qualifications to be more generalist policy analysts,' staff will have to be re-trained in their area.<sup>72</sup> Whilst this hopefully indicated that both sides maybe wanted to meet in the middle the result might result in more conflict and loss of specialist task skills.

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<sup>60</sup> Discussions with EEA officials

<sup>61</sup> *ibid.*

<sup>62</sup> Philip Alan Butt, *The European Union: Environmental policy and the prospects for sustainable development*, in Hanf, K and Jansen, A-I (eds) *Governance and Environment in Western Europe*, 1999, Harlow, Longman p.265-264

<sup>63</sup> *ibid.*

<sup>64</sup> *ibid.*

<sup>65</sup> Interviews with Commission Officials: DG ENV

<sup>66</sup> *ibid.*

<sup>67</sup> *ibid.*

<sup>68</sup> *ibid.*

<sup>69</sup> Interviews with EEA officials

<sup>70</sup> See chapter on DG ENV

<sup>71</sup> Interviews with Commission Officials: DG ENV and EIPA official

<sup>72</sup> Interviews with EEA officials

The DG had the powers of the budget at its disposal although recently it has been described as positive in its budget proposals for the EEA. However, the EP had increasingly more say over the budget and the Commission was said to be just the administrators of it.<sup>73</sup> The DG appeared to view the EEA in a more positive light. In accordance with the regulation it carried out two evaluation reports into the operations of the agency. The first report was moderately critical and on the basis of its recommendations a forced reorganisation took place two years later. Some sources described this reorganisation as done 'begrudgingly,' and stated that it was counter productive.<sup>74</sup> A second evaluation report (secret) appeared to state according to officials, that the EEA still had certain problems which were in part due to the complexity of the tasks facing it and the multi sector nature of their work.<sup>75</sup> Whether this would result in another reorganisation remained to be seen.

Another element in the troubled relationship between the DG and the EEA appeared to bear certain similarities to that of another Commission department, the Secretariat-General and another 'independent' agency, namely that of OLAF the anti-fraud agency of the Commission. We looked at OLAF earlier and its problems with the Commission. Like the EEA, OLAF started out as part of the Commission structure and would have remained so if it had not have been for the pressure applied by the EP and the debacle of the resignation of the Santer Commission. Independence was assured on paper for the agency but in practice the Commission attempted to control their staff recruitment and there was and is concern about its independence. In the 2003 evaluation report produced by the Commission there were signs that they were trying to claw back some of the competencies that had been given formally to the agency. In the case of both the EEA and OLAF there was apparently the feeling that the Commission had a low tolerance for independence in agencies linked to it and that competencies given on paper would be fought over in practice, regardless of the logic of the situation.

The Commission seemingly tried to influence staff / management recruitment and also allocate excessive tasks to the agencies.<sup>76</sup> With OLAF, task allocation strategies seemed to indicate that the Commission was trying to direct the organisation away from internal investigations in favour of external ones.<sup>77</sup> With the EEA there was evidence that the Commission wanted to reduce them to information providers, little more than an external service provider. With both agencies there were some problems concerning their budgets, with the agencies requiring greater resources in order to function effectively and the Commission refusing this and even appearing to use the budget to encourage the agencies in the directions that they want them to go.<sup>78/79/80</sup> Both agencies saw considerable delays in the appointment of their directors at different times and, according to some sources, the recent confusion regarding the appointment of the executive director of the EEA was testimony to the Commission's attempt to use the recruitment process which it organised to place their choice in control.<sup>81/82</sup> The first list of candidates only apparently included 37 individuals selected rather restrictedly by a mostly internal advertising campaign. Had the public advertisement been done as the EEA had wanted then thousands were expected to apply. The EEA rejected the Commission's two proposed candidates. The argument was about the wording of the regulation which stated that the

<sup>73</sup> Interviews with Commission Officials: DG ENV

<sup>74</sup> Interviews with EEA officials

<sup>75</sup> *ibid*

<sup>76</sup> See note 2 EEA, history in short EEA and the OLAF chapter.

<sup>77</sup> OLAF evaluation report 2003

<sup>78</sup> OLAF supervisory committee report sept 2001-June 2002 p. 8 and 12

<sup>79</sup> Preface by EEA's executive director, Domingo Jimenez-Beltran (1997) p. 2 [http://org.eea.eu.int/documents/ar1997/ar97\\_preface.html](http://org.eea.eu.int/documents/ar1997/ar97_preface.html)

<sup>80</sup> Interview with EEA officials and interview with Commission Officials: DG ENV

<sup>81</sup> European Voice, *Environment agency rejects candidates for senior post* 21-27 March 2002 p.6

<sup>82</sup> Discussions with EEA officials



EEA management board should appoint its director after receiving a proposal from the Commission.<sup>83</sup> The Commission appeared to have tried to influence OLAF's recruitment process at its founding which resulted in lengthy delays in it achieving its goal of recruiting sufficient experts to carry out its tasks effectively.<sup>84</sup>

The reasons for the Commission's attitude towards new agencies can be explained by organisational logic. Both agencies had begun their existence as parts of the Commission institutional structure. Some officials reinforced this point that the Commission would have preferred both agencies to have remained firmly under their control in practice, whatever was written in the formal agreements.<sup>85</sup> The differences between legal reality and operational fact were often wide and glaring to those involved.<sup>86</sup> Both agencies represented defeats for the Commission.<sup>87</sup>

The EP is considered to have increased its powers during the 1990's whereas the Commission is not.<sup>88</sup> The EP seemingly forced OLAF onto the Commission in the form it presently enjoys owing to the fact that the Commission was weak.<sup>90</sup> OLAF<sup>92</sup> and the EEA<sup>93</sup> are both agencies which enable the EP to perform its task of parliamentary scrutiny more effectively. The EEA provides indicators of environmental progress over time and also evaluated the effectiveness of Commission and Community policies in producing the positive outcomes they claim will be achieved, in a sense it cuts through the Commission spin. The EP has often had a problem assessing the effectiveness and efficiency of the Commission due to the lack of verifiable indicators. The EEA helped to rectify this situation, not surprisingly the Commission apparently disliked the agency making negative evaluations of its policies,<sup>94</sup> although its own officials had accepted that they were at times unable themselves to evaluate the policies they made and often there were problems with seeing them implemented.<sup>95</sup>

Personality problems were probably an explanation for the disputes between the DG and EEA, which led to the problematic communication with neither side really knowing what the other was doing. Allegedly the personalities of the ex-director general of the DG and the ex executive director of the EEA seemed to have been a major cause of the bad communication. Both men apparently wanted visibility for their organisations and considered that viability was inextricably interconnected with visibility.<sup>97</sup> The present apparent harmony between the two organisations seemed to have a lot to do with the two new leaders of the organisations. Both the new director general and executive director of the agency were from English speaking countries in the Community, both seemed to be organisationally minded with an interest in setting priorities and concentrating on detail rather than broad sweeping plans and strategies.<sup>98</sup> Both organisations were to be organised around the sixth environment action pro-

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<sup>83</sup> Interview with EEA officials and interview with Commission Officials: DG ENV and see note 81 European Voice, *Environment agency rejects candidates for senior post*

<sup>84</sup> See OLAF chapter

<sup>85</sup> Interviews with EEA, OLAF officials and MEPs.

<sup>86</sup> See note 20 Eur-lex

<sup>87</sup> See note 18, House of Lords session 1997-98 and note 20 Eur-lex

<sup>88</sup> Liefferink, D and Andersen M.K. (eds): *The innovation of EU environmental policy*, (1997) Oslo, Scandinavian Press p. 79

<sup>89</sup> Craig, P and de Burca, G. *EU Law text, cases, and materials third edition*. (2003) Oxford, Oxford University Press p. 35

<sup>90</sup> Kuhl and Spitzer 18.08.2000. Das Europaeische Amt fuer Betrugsbekämpfung p. 6

<sup>91</sup> Discussion with MEP Boesche

<sup>92</sup> *ibid*

<sup>93</sup> See note 18 House of Lords session 1997-98 p. 22 § 51

<sup>94</sup> Interview with MEP

<sup>95</sup> The environment sector has almost the worst policy implementation record in the Commission, and over half the infringement cases brought under art 226 EC Treaty are of environmental origin.

<sup>96</sup> See note 18 House of Lords session 1997-98

<sup>97</sup> Interviews with EEA Officials

<sup>98</sup> *ibid*

gramme of the Community and this was likely to lead to some rationalisation of resources. Yet despite the desires of the leaders, several officials expressed the view that there was still a lack of clarity as to the competencies of the organisations and that the harmony was more an attempt at papering over the cracks because the present situation was, according to one official, 'delicate'.<sup>99</sup>

The relationship between the EEA and the EP has been described as one of 'affection' which ensured that the EEA was treated generously in budgetary terms and thus able to grow to its present size.<sup>100</sup> On one occasion the environment committee of the EP requested a report on green taxes, which involved some policy analysis, from the EEA. This report created difficulties with the Commission which thought the EEA should not have accepted the task. Again the Commission was apparently unhappy about the agency having anything to do with a project that even vaguely bordered on policy analysis, regardless of how useful it was to the Community at large.<sup>101</sup> The EEA officials formally visit the EP two or three times a year to report.<sup>102</sup>

The unease with which the Commission viewed the agency was perhaps not just owing to its current strength and threat, but rather the DG Environment and the Commission as a whole are aware of the potential in the agency to become even more the tool of the EP. The following passage illustrates this danger, 'There is scope for the EP to play a more active role in encouraging conformity with Community legislation and in supervising the Commission in the exercise of its responsibilities. We recommend that reports by the EEA should be submitted to the EP as well as to other Community institutions.'<sup>103</sup> The Commission was quite aware of such sentiments and knew that one role of the agency was to provide information about their activities and to expose the reality behind their environmental promises, as one MEP said. It would be odd for them to actively support any extension of the agency's competencies into this area or any other which could threaten them. According to one source, the first executive director of the EEA wanted the agency to be a political organisation close to the EP and in the DG's view the EEA was much too close to the EP for their liking and this explained the criticism which the EEA aimed at the DG in their first synthesis report.<sup>104</sup>

There would appear to have been a mutually reinforcing circle of scrutiny in existence in which the EP desired to improve the level and standard of the scrutiny with which it controlled the Commission. It relied on the EEA to help it in this regard and to provide the indicators which were essential for any meaningful monitoring of the Commission. The EP committee on the environment was frustrated at the bad record of environmental law implementation, and expressed its lack of certainty that the Commission was really serious about dealing with the problem.<sup>105</sup> The EP representatives of the EEA management board expressed their desire to see the EEA be involved in the implementation process.<sup>106</sup> The EEA was kept under scrutiny by the Commission, here the DG ENV, and the latter issued evaluation reports on the performance of the agency. The EEA knew that it could appeal to the EP and its budget was partly controlled by that institution, and Commission knew that the EEA could make such appeals and that the EP could, had, and may well in future make use of the EEA, to challenge the Commission's claims. The various institutions occasionally made use of the existence of

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<sup>99</sup> Interviews with EEA Officials

<sup>100</sup> See note 18 House of Lords session 1997-98 p.115

<sup>101</sup> *ibid* p.112-113

<sup>102</sup> *ibid*

<sup>103</sup> *ibid* p.37 § 13

<sup>104</sup> Interview with MEP and Interviews with DG Environment officials

<sup>105</sup> Interviews with EEA and DG Environment officials

<sup>106</sup> *ibid*



this circle and as a result could hold their counterparts in check.<sup>107</sup> The different responses of the cabinet level of the DG and the DG services to the budget question were interesting, the former stressed that the EP was responsible for the budget now<sup>108</sup> whereas the latter was categorical that the Commission could and would use the budget to direct the activities of the agency if necessary.<sup>109</sup> There were allegedly cases where the cabinet of the DG have informally discussed issues with the EEA before approaching their own DG services (the administrative arm of the DG and sometimes at odds with their political leadership in the cabinet.) On at least one occasion the cabinet, many of whom including the Commissioner were Scandinavian, worked on a directive with the Denmark based EEA rather than with the DG services which were seen as slow and heavy in their methods.<sup>110</sup> One of the major issues in which the DG services and cabinet were at odds was over the EEA entering the enlargement process ahead of the DG itself. On the desk officer level there were contacts between the organisations but as soon as decision making officials were involved the lines appeared to stiffen.

## 5.5 RESTRUCTURING AND REORGANISING THE EEA

Both the relationship between the DG and the EEA and the organisational weaknesses mentioned earlier, led to changes in both the way the agency perceived itself and in its mission and to changes in its structure. Since its inception the agency had seen constant reorganisation but there have been three major reorganisations which took place in 1998, 2001, 2003. The 1998 reorganisation was aimed at reordering the EEA to match resources with the changed reality that the agency now faced. The agency had over extended, owing in part to the lack of strategic management and the ad hoc basis on which tasks were allocated, and it had to withdraw and regroup and redefine tasks and roles. It was impossible for the agency, considering its size and resources, to cover all the sectors it was attempting to cover, the environmental sector was vast and was potentially involved in every other sector of Community activity. The reorganisation began to modify the agency's organisation but it did not go far enough, given its by now entrenched compartmentalised nature any radical change would run up against vested interests.

The evaluation report made in 1999 made it clear that the agency had further weaknesses that it needed to address, one of which at least was that it did not involve itself enough with the policy makers it was supposed to be serving. A summary of the report's contents was that the agency needed to consider balancing its resources better to match short and long term developments. It should aim ' . . . at better balancing short, medium and long term developments; external relations EEA management and group management; innovation and routine activities; work on products and services; EEA development and staff development; . . . to improve communication tools.' There was also a tendency to generate information without any clear strategy, purpose or market. The report emphasised that they had to put more resources into strategy and planning with regular reporting becoming more focused. Pressure was applied to the EEA to reorganise itself and to provide the products that were required. Despite the negative comments expressed in the report the core activities of the EEA were not criticised.<sup>111</sup>

Formally the resulting reorganisation was a 'response to the performance evaluation completed in 2000. The Agency revised its strategy in early 2001 to develop from being a report

<sup>107</sup> Interviews with EEA and DG Environment officials

<sup>108</sup> *ibid*

<sup>109</sup> *ibid*

<sup>110</sup> *ibid*

<sup>111</sup> EEA web site *The EEA reorganises to meet new challenges* [http://org.eea.eu.int/documents/ar2001/EN\\_text\\_web.pdf](http://org.eea.eu.int/documents/ar2001/EN_text_web.pdf)

producer to an information provider. . . .'<sup>112</sup> The enlargement also played a role 'In the light of the evaluation and in view of enlargement the Agency was reorganized'. It aimed to address all the issues arising from these motivating forces by 'clustering people together in programmes and groups based on similar areas of expertise, separating longer-term planning and preparation of future work programmes from implementation of the agreed work programme, and ensuring clear and consistent distribution of responsibility for the various Agency clients and stakeholders'.<sup>113</sup>

Despite the impressive sense of critical mass for change having been reached the effect of the report was, initially at least, apparently to provoke resistance in the agency and the plans for an immediate reorganisation were postponed until 2001 and then they were only unwillingly implemented and some of the major changes were avoided. One of the weaknesses of the agency, namely that of over specialisation, was considered in the plans for the reorganisation as it was obviously partly to blame for the comments in the evaluation report. The apparent absence of a clear organisational strategy and goal was bound up with the fact that every sub unit was following its own goals and interests, all too often in apparent isolation from the rest of the organisation and the market they were serving. Put another way, the mission statement goals of, 'timely, targeted, relevant and reliable information' provision were seemingly not being met. Huge reports which were not particularly user friendly were being produced without any audience in mind. The measure involved the introduction of cross cutting teams which would have served to bring together specialists from various sub units into teams dealing with specific issues e.g. signals reports, etc. The final goal was to create a matrix organisation in which specialisms supported and worked with each other in teams. Had the measure suggested been followed through then it might have improved the excessive specialisation in the agency. This idea was first floated in 2001 in the run up to the major re-organisation of that year. At the time the staff proved to be very much in favour of it but without explanation the idea was apparently dropped and not mentioned again and played no part in the re-organisation.

The reorganisation which occurred was seemingly largely reactive and as a result the urgent internal reasons for changing the organisation were ignored and the sense of acting under duress remained. One positive development that did occur was the creation of the strategic development and international cooperation directorate, directly under the executive director's office and is intended to encourage strategic thinking in the organisation and to pull the sub units together in a joint drive to working together more with policy makers. The signs were good that this attempt would prove to be successful. After the 2001 reorganisation there was still need for what are described as 'more efficient internal procedures . . . to ensure good management of the enlarged agency.'<sup>114</sup> Indeed a further re-organisation, possibly stimulated by the sense of unfinished business, the arrival of a new executive director and the imminence of another evaluation report, had to take place before the process that was sporadically begun in 1999 could reach fruition.

The subsequent reorganisation in 2003 which took place with the arrival of the new executive director apparently led to the reintroduction of cross-cutting teams. This reorganisation apparently followed on the growing realisation that the agency needed to prioritise its resources and to manage the information it produced rather than randomly generate it. This idea had begun to blossom after the 1999 evaluation report said the agency needed to use the information and structures it had more effectively rather than producing more. The agency was moving from

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<sup>112</sup> EEA web site *developing the EEA*

<sup>113</sup> EEA web site 2001 in brief [http://org.eea.eu.int/documents/ar2001/EN\\_text\\_web.pdf](http://org.eea.eu.int/documents/ar2001/EN_text_web.pdf)

<sup>114</sup> EEA annual report 2002 p. 5



attempting to cover every aspect of the environment to the more realistic position of their staff needing to have a more general overview of the broad sector whilst purchasing in the detailed expertise as required. There were plenty of institutions able to provide the data and there was a risk of the agency duplicating their work and expertise and thus missing its own path. As is so often the case with effective reorganisations the formal changes merely sealed the growing move towards the focusing of the organisation's activities that had already been taking place.

There was apparently a growing realisation in the EEA as reflected in its reorganisations that a corporate strategy had been lacking and was essential. Information had to be considered in a different manner to previously and its provision seen as a science. Information had to be developed which was that which policy makers really required, the means to achieving this was greater interaction with those who needed it, via work shops and more consulting. With the case of genetically modified organisms (GMOs) the EEA successfully followed its new strategy. The problem of compartmentalised information was inevitable in large organisations but it needed to be countered. Their goal was to produce readily understandable and 'digestible' 'information bytes' in reports which were produced for specific circumstances or crises, these would boost the EEA's profile and were more useful to their customers. There were seemingly some misgivings in the EEA about the dangers of producing reports which were user friendly but possibly also less objective, but the days of the agency generating huge reports for no audience appeared to be numbered. An element of risk management was going to be involved in the strategy i.e. if there were greater uncertainties, then the sweep, for information had to be wider and more inclusive than if a formal task like 'building a bridge is involved', in the latter case the necessary information was likely to be needed by a restricted audience and would follow a well set pattern and involve a small number of actors, it is clear who has the knowledge and who needs it; the agency has to consult widely, keep involved with the latest science and ensure excellent internal and external communications; both were criticised in the latest evaluation report and were specified as areas requiring improvement.<sup>115</sup>

Both the 2001 and 2003 reorganisations seemingly corresponded to some extent with the move throughout the Community's environmental sector towards adopting a more joint strategy on sustainable development, and in particular the sixth environmental action plan of the Community. The first Community organisation to reorganise itself around this programme was DG ENV and this move towards a clearer strategy with the making of priorities which that entailed was greeted by some as a positive step. Indeed the DG had allegedly been considered to be hard to work with owing to its lack of a clear strategy and corporate plan. The reorganisation took place in 2000 and led to some major upheavals in the DG. The EEA finally followed suit with its reorganisation of 2003 which was based around the Sixth Environmental Action Programme (6EAP). The goal of the organisations was to bring coherence into the environmental sector and to use the 6EAP as the core around which to organise their activities. There was also discussion about a new DG being created which would be named DG sustainability and would certainly absorb the DG ENV and maybe the others too.

The less discussed reasons for the reorganisations were not so obvious, what was clear is that the DG led the way and seemingly set a domino effect in action. The declared purpose of the DG ENV 2000 reorganisation was to translate the 6EAP into structural change. Whilst this goal was no doubt involved in the DG management's calculations, the changes were allegedly also a useful method of re asserting management control over lower management and desk officers, many of whom had developed efficient compartmentalised empires. Policy networks involving the desk officers, their heads of unit had seemingly made management more difficult. Throughout the 1990's there would appear to have been an attempt to change the organ-

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<sup>115</sup> Interviews with EEA Officials

isational culture of the DG and in 1999 and 2000 the same appeared to have been the case in the EEA reorganisation. Both organisations had allowed their desk officers a great deal of discretion but the emphasis in both the DG and the agency was being placed on less but better, and so the lower levels of management and desk officers saw their discretion diminished and the organisational decision making centre of gravity return to the higher management. It seems a remarkable coincidence that the Commission began its reforms in 2000 with the emphasis on better value for money, less legislation and better management control if possible, and the EEA and DG both reorganised within a year. It would appear that a reason for the reorganisations was the desire by the management in both organisations to use the Commission crisis, and the sudden acceptance of radical reform as an antidote to the Community's problems, to break up private empires and take control over their organisations again, in particular in the face of a revitalised opponent, namely for the EEA, the DG.

The Community institutions have often been defined as porous with networks forming between them often based more on level and purpose than anything else. Cabinets have routinely circumvented management to address desk officers, and management have seemingly fought back by trying to break off all such contacts. At a lower level the desk officers and some heads of unit had worked closely with in both EEA and DG, maybe too closely, and granted the nervousness with which the higher management seemingly perceived their organisation's independence and competencies in the Community network of institutions, it is likely that when under pressure management react defensively.<sup>116</sup> Crises can bring together or they can force further apart, the reorganisations probably reflect both. The organisations seemingly initially used the Commission crisis to re-entrench themselves with the management in both taking the opportunity to regain power in their own organisations. Since the 6EAP was used as the new means to structure the DG in the cause of sustainability the EEA had to effect some changes and to concentrate on quality and not quantity in its competition with the DG. Quality and sustainability were the goals of survivors in the tougher environmental sector of the late 90's and early 2000. The EEA had to respond to the more tightly managed DG organisation it now faced but it did not at this point decide to link its reorganisation to that of the DG and to base it around the 6EAP. The various interviews which were carried out in both organisations reinforced the notion that the real reasons for the reorganisations in both the EEA and the DG were the above. Thus the 6EAP was to an extent probably an excuse for tightening management control and organisational identity in the DG and the broad portfolio of enlargement, strategy, Commission reforms and evaluation report were given to justify the changes in the agency both performed in a top down manner, by dynamic top managers who have been said to have been vying with each other.

The fact that there was the subsequent need for reorganisations in 2003 in both organisations is a sign that the first reorganisations of 2000/2001 were not fully effective, at least in attaining the goals they claimed to have set out to achieve, although they were quite successful in achieving management re-control over their organisations. But it is a curious coincidence that the reorganisations in both organisations again occurred so soon after each other. This time the EEA claimed that it was adopting the 6EAP as the basis for the reorganisation and this would remain the case in the future. The DG on the other hand reorganised again and this time the 6EAP was not the justification but rather a general movement of policies and personnel. It would appear that the two organisations respond to each other but not in a way that suggests policy coordination, since the reorganisation of the EEA in 2001 should have been like that of the DG and should have had the 6EAP as a basis. Instead it matches the move to the 6EAP as the DG changes again, which would appear to imply that whilst there are many other factors involved in the decisions to reorganise, a motivation of the management of both

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<sup>116</sup> Interviews with EEA Officials



organisations is apparently to increase control over their own organisations both internally and externally vis-à-vis each other.

One last reason for the reorganisations that was given by one interviewee, was that environment government organisations are 'high energy' organisations<sup>117</sup> and that to maintain this momentum and energy levels, opportunism and constant changes have to be adopted, 'to make progress you must reorganise,'<sup>118</sup> however the general slow down in the EU environmental field is the backdrop for these reorganisations. Progress is less likely than standstill or stagnation in the present environmental organisational climate, thus the reorganisations discussed above would appear to be more related to defensive regrouping and less to "high energy" levels.

It was worrying that the environmental organisations were seemingly still not coordinating effectively after nine years of interaction. The EEA annual work plans for 2001, 2002 and 2003 onwards all contained the key aim of improving the flow of information between the DG and itself. In 2001; 'the main activities and outcomes for 2001 can be summarised as follows . . . strengthening the MDIAR (monitoring, data, information, assessment, reporting) capacities through networking with the Commission . . . to support EU activities on integrated environmental assessment and especially environmental outlooks and scenarios.'<sup>119</sup>In 2002; 'The major directions for the EEA 2002 work programme are the following: to enhance delivery of environmental information serving three major policy priorities . . . integration of the environment into economic sectors and information needed for the Commission's sustainable development strategy.'<sup>120</sup>In 2003 'The EEA is faced with a number of major key challenges in 2003: developing and sharing information on environment and health . . . to support Commission activities . . .'<sup>121</sup> Evidently the aim was not being reached despite the reorganisations. In the annual report of 2002 a draft memorandum of understanding is stated as having been signed to 'establish guidelines for closer cooperation.'<sup>122</sup> Given the problems, why this was not done in 1994 remains unclear, maybe it had something to do with the change in direction heralded by the departure of the energetic ex-executive director and his replacement by an acting director Gordon McInnes, who was stated as 'forging stronger links to the key clients in the European institutions.'<sup>123</sup> The seeming lack of a common approach between the two organisations was most clearly seen in the issue of the enlargement which will be discussed.

The reforms of the Community with regard to staff hiring were also feeding into structural aspects of the EEA. The Commission staff regulations were gradually being modified and this applied to the EEA as well. This allowed the agency to employ 'agents' who had seven year contracts and who could be brought in to work alongside the officials with full contracts. Flexibility was thus ensured as agents could be brought in when required as they were employed from a different budget, (title three) and not budget A, that used for permanent officials. The danger of this new approach was that morale would sink as staff, sitting next to each other doing similar tasks, discovered they were on different contracts. For the agency, in which many of the officials were employed on supposedly temporary contracts which in practice never ceased, the problem was perhaps not as acute as in the Commission where this was apparently not the case. This method combined with the increasing use of expertise outsourcing, could also enable the management of the agency to increase their control by breaking down the en-

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<sup>117</sup> Interviews with EEA Officials

<sup>118</sup> *ibid*

<sup>119</sup> EEA annual work programme 2001

<sup>120</sup> EEA annual work programme 2002

<sup>121</sup> EEA annual work programme 2003

<sup>122</sup> EEA annual report 2002 p.12

<sup>123</sup> *ibid* p.5

trenched information compartments and ironically allow themselves to have alternative sources of information to that provided by their own staff. On top of this the EEA's staff were required to move into more generalist areas and also, since the emphasis of the agency was on producing less quantity and more quality there were likely to be more staff per task than before, supply and demand would appear to have improved the managers' situation considerably.

## 5.6 EEA AND THE ENLARGEMENT

One of the coups which the agency managed to carry off successfully was its enlargement in January 2002 to include the soon to be MSs Bulgaria, the Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Romania, Slovakia, and Slovenia, Poland and Turkey were also expected to join. The agency had been actively involved with these states for five years prior to the formal enlargement of the agency in the implementation of the PHARE project which involved the development of administrative capacity in the NMSs as they set up their elements in the EIONET. The EEA regulation required it to set up networks of experts in the MSs and the NMSs thus the EEA had been actively involved with the NMSs since 1996. A small office was set up in the agency during this period to deal with PHARE and it employed two people and spent 21 million Euros on 100 projects. The EEA paid for the office as the PHARE funds were spent on the NMSs. Many of the PHARE projects petered out into nothing tangible but the EEA ensured that their PHARE project led towards the enlargement of the agency. PHARE provided multi-country support and the EEA wanted to keep this structure since it treated every state as equal. The DG on the contrary apparently wanted to deal with NMSs on an individual bilateral manner.

The extensive experience in the reality of the enlargement process which the agency gained in its dealing with the NMSs placed it ahead of the DG as the latter apparently acknowledged. The agency worked at enabling the NMSs to incorporate and implement the environmental chapter 22 in the regular progress reports of the *acquis* by creating administrative capacity in their institutions. The EEA helped them too by its goals of harmonising monitoring systems and encouraging effective data flow. This resulted in an improved flow of information for the Commission via reporting to the DG which was important for it in its policy making role and its task of assessing the readiness of the NMSs for accession. One of the major projects which the agency was working on was the streamlining of the complex reporting requirements which the NMSs as well as the MSs were required to perform. This was a crucial area of work as the NMSs were currently being overburdened by demands for networks to be set up in order to supply reports for various DGs. These DGs, divided in a sectoral manner in the Commission, placed onerous demands on the fragile and slowly expanding networks of experts in the NMSs. Apparently little attempt was made by the DGs to ascertain whether the NMSs had already been required to set up similar networks and provide similar information to other DGs. As a result seemingly a duplication of tasks took place, with several networks coexisting side by side, generating similar information but not aware of the other network's existence. The fragmentation of the DGs internally and between each other within the Commission was responsible apparently for this situation, as was the lack of resources within the Commission to provide the information themselves. It was easier to place the requirement of creating another network and reporting process on the backs of the NMSs which were, after all, interested in keeping on good terms with their assessors, rather than to acquire the information from expensive private institutions or of course from the EEA, for example. In other words the absence of administrative capacity in the Commission and the ability and willingness to



rationalise internal procedures and to improve internal communication within DGs and between them was endangering the enlargement process.<sup>124</sup>

The already over stretched resources of the NMSs and their supply of experts were being wasted on duplication. What was more, their academic and intellectual assets were being diverted from the needs of their economies and ministries for domestic uses in the direction of creating needless layers of bureaucracy. Hard-pressed ministers and their civil servants were not able to direct attention to where those closest to the ground considered it to be most necessary, but were rather having to follow the requirements for accession as defined by disputing Commission DGs. There was already expected to be a brain drain from the NMSs to the Community institutions and Western Europe as a result of the enlargement, the multiplication of networks was expected to exacerbate the problem further. As fast as the NMSs were creating the administrative capacities they were obliged to in order to meet the Copenhagen criteria relating to implementation of the *acquis*, so the capacity was being absorbed into superfluous networks. If the Commission had rationalised its own internal communication and management procedures the process of enlargement could have been considerably helped.<sup>125</sup>

The method by which the agency enlarged prior to the rest of the Commission is indicative of the confusion in the Community institutions and the potential for inter institutional rivalry potentially at the expense of the vital Community policies like enlargement. The agency recognised that its regulation both in the preamble<sup>126</sup> and in Article 19,<sup>127</sup> allowed it to open up itself to new members including the NMSs and to receive funding to achieve this. It decided with the NMSs that it would be helpful to both if they enlarged in advance of the formal enlargement of the Community. The agency worked closely together with all ten of the NMSs in 1999 to write a letter to DG ENV requesting for the permission to enlarge the EEA. The DG 'services' allegedly did not want to allow the enlargement to take place, after all it had not initially been planned and inevitably it meant more resources for the EEA. Thus the services allegedly refused, but the DG cabinet accepted the letter and the enlargement. The EEA and the DG cabinet worked together without the initial support of the services, later this came, so that four months after the letter had been sent the acceptance was received. Commissioner Wallstroem of the DG said that nobody had expected the enlargement to take place; the executive director of the EEA stated that the enlargement had been a big achievement. According to one source the enlargement assisted the agency vis-à-vis the DG and ensured that the agency had the positive visibility it needed after the problems associated with the evaluation report and raised its profile considerably.<sup>128</sup> After the set back of the evaluation the EEA had outmanoeuvred the DG 'services' and gained more resources for itself.<sup>129</sup>

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<sup>124</sup> Interviews with EEA Officials

<sup>125</sup> *ibid*

<sup>126</sup> Regulation (EEC) 2110/90 preamble to 'Whereas it is desirable to provide for the Agency to be open to other countries which share the concern of the Community and the MSs for the objectives of the Agency under agreements to be concluded between them and the Community'

<sup>127</sup> *ibid* article 19 'The Agency is open to countries which are not members of the European Communities but which share the concern of the Communities and the MSs for the objectives of the Agency under agreements concluded between them and the Community following the procedure in Article 228 of the Treaty.'

<sup>128</sup> Interviews with EEA Officials

<sup>129</sup> Initially the NMSs had worked with the agency on a voluntary basis in the PHARE project, but this was less active than the decision to press for the enlargement which was a policy driving process in which the NMSs showed that they were interested in using the opportunities provided by the EU and could act both as a bloc and in a pro active manner, both important for their future success in the Community institutions. For the EEA increased membership meant increased influence as well as increased funding. For the first three years the fees which the NMSs had to pay to the agency were to be supported by PHARE: 75% in the first year then 50% and 25% for the subsequent years. The funds which they would be able to receive from structural funds would be 26 Billion Euros as opposed to the 3 billion they were then able to receive. Prior to the formal Community enlargement the NMSs had a special contract status with the agency but as soon as they became members of the Community this status was expected to lose its attraction and value and therefore probably change to that of the rest of the

The success of the EEA enlargement was reflected in the fact that Turkey and Malta wanted to copy it and discussions had begun with the Balkan countries. The problem was that the EEA had little to offer these states at that point in time, apart from environmental information. Obviously one of the reasons for the NMSs to want to join the agency was because it served as a stepping stone into the Commission and the Community as a whole. The practice they gained in dealing with the Community from within one of the institutions was also considerable and beneficial, but it was likely that their desire to join the agency was also for other reasons. The EEA was important in the provision of information to the Commission about the readiness of the NMSs for accession in terms of administrative capacity and ability to implement environmental legislation, this was certain to have played a role in the NMSs decision to press for membership. If nothing else they showed the Community their interest in getting involved in the Community as fast and as fully as possible.

Some positive developments had occurred in terms of reducing duplication and enhancing performance because of the enlargement. Prior to the enlargement there had been two structures, the PHARE ones and the topic centres; now there were Etopic centres which are a combination of the two previous networks. In tune with EEA thinking there were no differences between the new and the old members of the EEA. In the agency there was plenty of optimism about the Community enlargement and its likely effects. And yet there was apparently evidence that environment ministries in the NMSs as well as the MSs were in danger of being governmentally integrated out of existence by stronger sectors like agriculture. The assistance of the EEA and finally that of the Commission might prove necessary to provide support to the ailing ministries. There was growing acceptance that the EEA could be considered to be a test run for the enlargement of the Community and was therefore of particular interest to DG ENV which was likely to have very similar problems and experiences.

Several effects of the enlargement on the EEA were observed, some positive some less so. At first the EEA apparently experienced a positive sense of mission and direction and the organisation was imbued with energy and optimism. Interest and motivation increased dramatically as resource flows matched the increases. At first allegedly 10% of officials' time was absorbed in dealing with the NMSs this rose to around 15 % which was still moderate when considering that membership had increased by over a 30%. The organisation had experienced a sense of vision and buoyancy which the DG could also expect. After this, though the state of readiness of the organisation to address the real issues was tested and in particular the preparations which had been carried out earlier. Once states were members and no longer on the outside they expected to see value for money. The NMSs were initially still being supported by PHARE but as this was incrementally reduced, and therefore as their own contributions increased so their attitudes changed. The agency had to face the problems related to Turkey which finally joined the agency. The environmental information reporting systems were problematic and Turkey expected the agency to help them to put such systems into place: Turkey was going to be disappointed.<sup>130</sup> The expectations of many of the NMSs were going to be disappointed as the studies necessary and the projects that would have followed on behind had not been carried out. The motivation of the NMSs to comply with the environmental *acquis* is very high, but after the formal enlargement of the Community and they experienced first hand the bad compliance records of the rest of the MSs, this was expected to possibly change.<sup>131</sup>

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MSs. Most of the NMSs had performed most of the EEA working programme and were therefore fully operational members of the agency.

<sup>130</sup> Interviews with EEA Officials

<sup>131</sup> *ibid*



In terms of officials the agency had deliberately sought to employ staff from the NMSs since they had the local knowledge, cultural know how and the networks necessary to link the agency effectively to the states in question. Also the states had the feeling that they were getting something tangible back in terms of nationals employed in the agency. The new staff had to work with the EU presidency on policy and environment and were being fully integrated into decision making. They had been and were being forced to learn about the reality of the EU by being forced to focus on real EU problems; the process of building up a consensus in the complex, at times slow Community. The new staff and their states could not just criticise from the margins any more. For many the sheer scale of the 'strait jacket' of the EU system came as a shock. Many were apparently shocked and disillusioned at just how 'strait jacketed' they were in the Community institutions, the free atmosphere they had expected was simply not there, some of the restrictions which they had to operate under are as bad as those they experienced in their ex-communist countries of origin.<sup>132</sup> The idealism with which many came to the Community had seemingly quickly evaporated. However, they also noticed how their weight as members of staff has changed as their countries became full members (two NMS members of staff had served in the agency before their countries became members), they could now affect teams and internal processes which was good for their careers and their understanding of the EU policy struggle.

EEA staff had to see the NMSs as individual states with very different cultures and national traditions. Far from being like a bloc, the various states often bore closer resemblance to their geographical neighbours which were already MSs, than they did to each other. Poland and Polish officials and ministries were bureaucratically minded and quite Germanic in their way of thinking whereas as Bulgaria was more like Italy, and its nationals tended to have more Mediterranean attitudes. It was to be expected that the southern NMSs would naturally align themselves with countries from the same region sharing similar environmental problems and attitudes. The example of how differently the Greeks and the Germans viewed the war in Kosovo showed how neighbouring countries were far more ambivalent about military action than northern ones. The agency was facing the problem of limited resources and of having to balance the needs of its new members with those of its old ones. How it resolves this dilemma could be important for the Commission as well as scarcity of resources and many demands.<sup>133</sup>

## 5.7 CONCLUSION

The case study of the EEA was the only one to be performed on an organisation less controlled by the Commission than most. In this sense it also serves the function that discussions with NMS officials has, in providing external feedback on the Commission departments concerned. We have seen that the EEA was an interesting case as it revealed some trends in the EU, and also showed once again the Commission's resistance to reform and any organisation that is in a position to inspect it and its performance. The Commission is stated to react rather allergically to European agencies regardless of their usefulness. On a more fundamental level the combination of a sector interest with MS actors as happened in the EEA could be the nemesis of the Commission and it is likely it senses this. The EEA, in a similar manner to UC-LAF/OLAF, was also created originally to plug a gap in the policy making arena, namely that of policy evaluation and feedback.

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<sup>132</sup> Interviews with EEA Officials

<sup>133</sup> *ibid*

In terms of the EU – Commission cycle of slowdown (stagnation) we can say that the EEA reflects what could appear to be a concerted attempt by the MSs to reassert control over the environmental field. We can also say that the EEA seems to also be a symptom of general fragmentation and sectoralisation of EU policy fields, as will be discussed later, much like the other agencies and so related networks. The danger is that these represent an acceleration in the centrifugal tendencies already apparent in the EU, with more power going to sectors. MS-Commission rivalry is resulting in yet more actors with diluted compromise competences which are not effectively coordinated by any central authority. A more sensible approach might as usual be for the functions of the EEA to be incorporated into the Commission or rather a new governmental structure which will be outlined in the recommendations section. The problem is the ongoing unwillingness of the MSs to provide the necessary resources to the Commission to manage properly.

There is also the basic organisational rivalry and resistance to reform of the Commission to be taken into consideration. As with OLAF the Commission seems to see the EEA as a rival and competitor, where they should be complementary. The EEA offers the Commission the necessary policy evaluation required for improved future policy making and programming and this should be complementary. The Commission legislates and has real legal authority which the EEA simply does not have and yet it apparently resists the agency. The Commission controls EEA funding to some extent and seems to be willing to use this mechanism if needed. It has also applied the same method used with OLAF of wanting the EEA to concentrate on external data collection and the generation of general reports on the state of the environment and others for the benefit of the DG, rather than concentrating on evaluation of DG policy. Granted that some environmental legislation could well have been improved on, according to some DG ENV officials themselves, the agency should be welcomed for this reason alone. Whilst the political motive cannot be denied these authors' views are also accurate. Which leaves the observer with the feeling that the Commission, here DG ENV is possibly jealous about its monopoly over all aspects of policy making and reluctant to accept any reform of the policy making process and so indirectly itself.

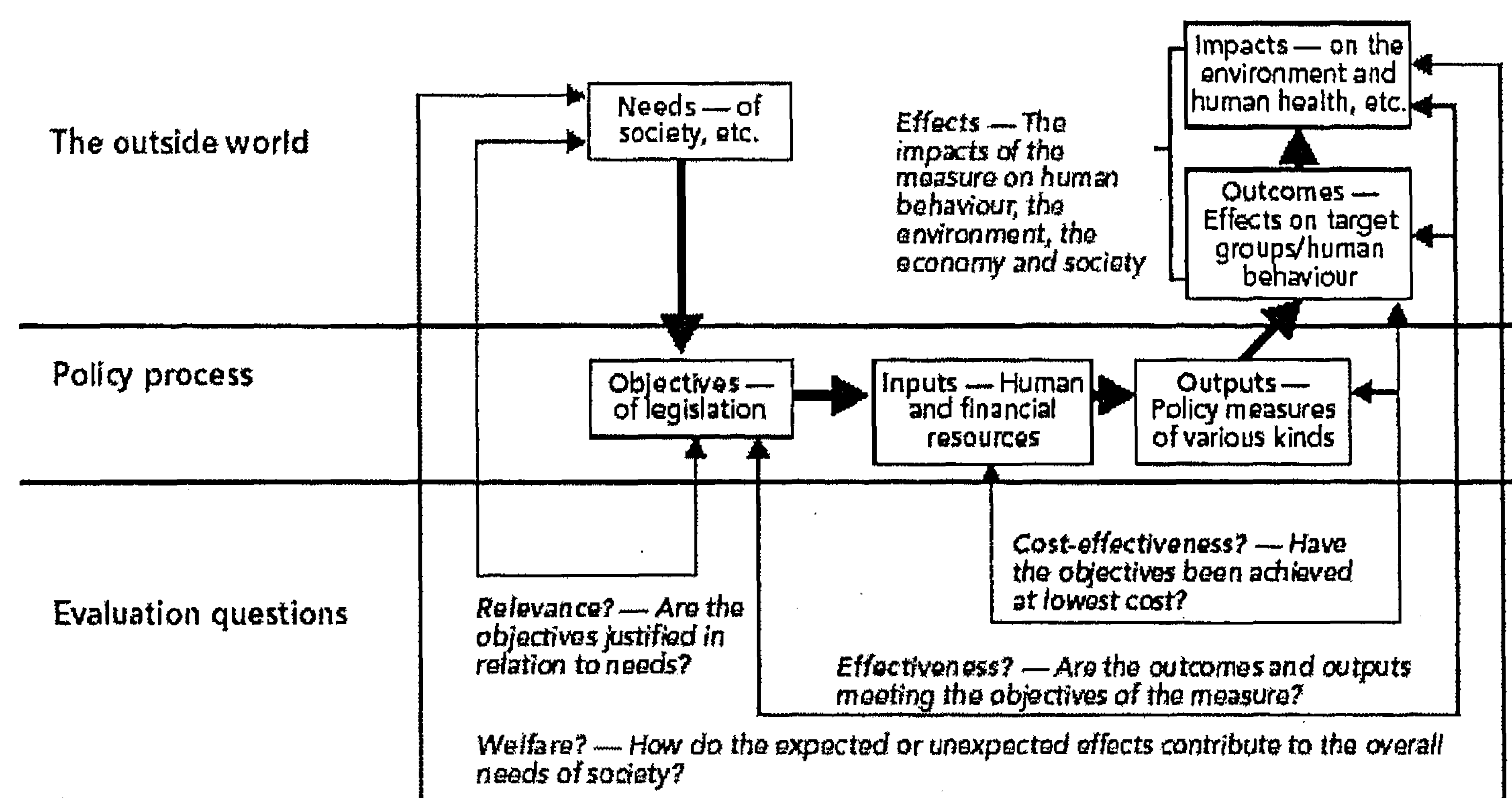
With regards to the enlargement, there seems to have been a measure of rivalry here too. The DG seems to have wanted to curb the EEA from enlarging first and so beating the Commission to it. There seems to have been little policy reason for this but just another sign of the organisations unhealthy rivalry. The EEA was quite critical about the DG and its enlargement activities and stressed the habit of the Commission failing to coordinate itself internally and as a result requiring that the limited resources of the NMSs be used to construct networks which were duplicating each other. This was particularly bad where different sectors were involved and the DGs did not coordinate or check first, whether or not a network was already in existence before simply requiring another to be made. Duplication between the DG and EEA is also a danger if for no other reason than that the DG had seemed to lack a degree of coherence. The competition between the two organisations, also plagues the whole of the EU, is counter productive and leads to confusion and duplication rather than positive synergies; thankfully there are signs that this is gradually moderating.

A particularly interesting finding was the changing relationship of the EEA and DG ENV. Whilst the DG was more environmentally active and in a state of internal conflict the conflict with the EEA was at its worst. As the DG was apparently re-oriented via personnel reorganisations at various levels, and economic interests allegedly came to be more influential in it so the conflicts with the EEA subsided. In fact the interviews even seemed to show a quite cordial atmosphere existing between the senior management of both. There would appear to have been a take-over of the environmental field, to some extent, by MSs and these in part for eco-



conomic reasons. In that sense a larger MS strategy seems to have been followed of which the EEA was just a single element, a useful means of applying influence whilst the DG was re-oriented internally.

The EEA as an organisation seems to be remarkably like the Commission itself, or rather an interesting mixture of the Commission during its earlier phases, dynamic and acting like partisans almost, and also the more problematic Commission of the present day with resistance to reorganisation and lack of coordination. This young organisation was not surprisingly quite critical about the old fashioned, slow, bureaucratic DG and Commission. In this sense it seemed at times to almost present an alternative sectoral approach to managing the policy field, far more modern and partnership-like than the more formal approach of the DG to the MSs. Whether the EEA's attitude merely reflects greater sectoral self confidence and willingness to go it alone and to drop the old rivalries of the EU or rather a desire to see the Commission re-structured and rejuvenated remains to be seen.



[http://org.eea.eu.int/documents/ar2001/images/ar2001\\_14.jpg](http://org.eea.eu.int/documents/ar2001/images/ar2001_14.jpg)

**Dates of Interviews Held with:**

EEA Officials:

Official 1. 11. 06. 2003  
Official 2. 06. 08. 2003 and 29. 08. 2003  
Official 3. 03. 06. 2003  
Official 4. 03. 06. 2003

DG ENV Official: 11. 06. 2003  
DG ENV Cabinet Member with knowledge of EEA/DG Relationship  
DG Cabinet Member: 11. 06.2003

NMS EEA Official:

NMS Official: 03.06.2003

Visiting Scientist to the EEA: 15.9.2003



## 6. DG AGRICULTURE (DG VI)

We have now looked at one DG and two agencies all of which are relative new comers to the EU institutional scene. All of them have shown the qualities of the Commission which we would expect to find on the basis of the theory. There is a bureaucratic shell which surrounds the Commission which can respond flexibly in a dynamic period to allow officials maximum leeway to promote the Commission and the integration project. Equally during times of threat when fragmentation sets in and the sense of mission wanes, then MS and sectoral influence increases and as in the case of DG ENV, reorganisations were apparently used to combat the policy network. The bureaucracy was strengthened and became more rigid. DG ENV was seemingly made less of a threat to the MSs and other sectors by having its staff and organisational culture altered. Less infringement proceedings were put into force and the idea was even put forward that the complaints procedure be partially nationalised. DG AGRI is a useful case study which shows us a long standing DG which has apparently had a history of being cyclically penetrated by MS influence and sectoral policy networks. More than in many DGs, bureaucracy has increased in the DG to suffocating levels and the policy is under pressure to be partially re-nationalised. The resistance of elements of the DG to any reform and weakening of their position let alone the CAP can be expected to be serious, and the moves made by the Commission political authorities to restore their control over all the elements of the DG can be expected to be equally earnest.

One of the oldest and largest DGs in the Commission, DG AGRI deserves the title, 'Leviathan' in memory of the great monster which at first delighted its observers but later froze them with fear. An institution and a policy (Common Agricultural Policy, CAP) which was the integrationalist's hope and ideal but finally became a monster which devoured half the budget and a fair portion of the Commission's resources. It could be argued to have stunted the future development of the Community when funds could have been better spent on supporting the booming sectors of the European Economy. In the 1950s it was seen as the rescuer of the hungry Europeans and a bringer of stability to the states as a whole. Whilst undoubtedly also serving as the sweetener to the French for opening their markets up to German industrial products. In the 1990s, it could be said to be seen as a devastator of the countryside leaving in its wake a scarred, savaged environment, mal-treated animals, sickness in humans, unemployed farmers in Europe and starving ones in the third world. As a policy it appears to be intransparent with attempts recently launched to reverse this.<sup>1</sup> What on earth went wrong with the ideal and the idealism, what happened to the CAP and the DG that encapsulated it? Reading some of the descriptions of the effects of European intensive farming one could be forgiven for seeing one of the apocalyptic riders underway with a swinging scythe. Yet in the Brussels headquarters a far calmer picture is laid out, the monster has been tamed, if it ever existed.

What is clear is that the CAP is undergoing reform, however slowly and it is equally clear that the reforms have taken longer and are less dramatic than many would have wanted. The DG is at the heart of the reforms and however shy and reticent it likes to appear its powers have been considerable and remain pretty impressive even now. The CAP has often appeared re-

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<sup>1</sup> Kubosova, L. 'Member states back EU funding disclosure from 2008' 20.10.2006 'EU member states have supported proposed new rules to unveil individual recipients of all EU funds starting in 2008, with the EU25 asking the European Commission to run a central database for the information. The transparency principle is part of a revised EU financial regulation the bloc's ambassadors adopted on Thursday (19 October) and paves the way for a publication of beneficiaries of EU farm aid as well as of regional and cohesion funds'.

markably resilient to reforms, as has the Commission itself. One argument is that the MSs are the cause of the lack of CAP reform, they are unwilling to give up benefits. This is true up to a point, but the linkage between a DG and a Commission, which have repelled reform and their policies which have done likewise, cannot be ignored. Status quo and inertia favour those with power in the present, but not when that status quo provokes a reaction which gathers steam and threatens to reach a critical mass.

A survey of the DG reveals a far from uniform organisation itself undergoing internal change. Reforms occurred but were apparently not matched by internal reorganisation and remained stunted reforms. Rationality was supposed to lie behind the major reorganisation taking place in the DG in 2004 but the reality was seemingly rather different. The modest nature of the reforms up until 2003 seems less innocuous when the alleged missed chances are considered, the inefficiency, the blockages, negative protectionist policies and their effect on major policy issues like enlargement. A large proportion of the cause for the above seemingly lay in the DG itself and not in the MSs. It is described as 'shirking' the crucial issues of reform and not tackling seriously other fundamental issues of CAP reform.<sup>2</sup> The reason for much of the DG's behaviour is to be found in a combination of Sectoral fragmentation; Commission fragmentation; dynamic Policy Networks; MS interference and finally Bureaucratisation.

The findings relating to DG AGRI are now presented. The first point is that the growing power and willingness of the MSs to interfere in a DG seems to be most clearly shown in DG AGRI. There are several examples of MSs apparently pressing their nationals into positions as low as Head of Unit level and MS officials showing quite clear MS loyalty in their decisions. According to the literature there is a process of re-nationalisation going on in the policy and there are some who would like to see this continue. Unsurprisingly some within the DG have apparently resisted this tendency and the reforming of the policy and the DG. The French are stated to be one MS which is strongly present in the DG and resistant to any changes.

The article will describe the recent trends and history of the CAP and the DG, before moving on to consider the other main actors in the policy making process and the growing willingness of MSs to use staffing policies to extend their influence. DG Agriculture's structure is then discussed and its growing bureaucracy; the various groups which compete with each other for the direction of DG policy. General organizational observations will be made about the DG and inefficiencies stated. The curious use that has been made of the Kinnock reforms is then considered and is followed by an analysis of the powers of Policy Networks and their ability to resist reform to the CAP, the DG and of course enlargement.

## **6.1. CAP HISTORY**

### **6.1.1. CAP**

The primary task of the nascent CAP was to bring together the various instruments which the then Member States (MSs) had individually created to guarantee food for their citizens and support for their farmers. The hungry years of the Second World War and its aftermath formed the background for the creation of the CAP. In order to have a common policy the removal of these individual instruments and their replacement by the CAP was necessary. The declared aims of the CAP were; 'to increase agricultural productivity, to ensure a fair standard of living from agriculture, to stabilise agricultural markets and to guarantee the availability of

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<sup>2</sup> Tracy, M. *Agricultural policy in the European Union*, (1997). APS/AGRA. Brussels, FOCUS. p.103



food supplies for consumers at reasonable prices.<sup>3</sup> The CAP was 'based on support for cereals market prices at levels designed to safeguard the profitability of the least efficient producers.'<sup>4</sup>The outcome was 'extensive subsidisation and intervention on the internal market, a system of import levies which largely insulated the main commodity markets from world market influences, and subsidisation of exports to third countries.'<sup>5</sup>The main outlines of CAP were decided in Stressa in July 1958. The conference declared the design of the common system which stressed the need for structural change and higher productivity. The Commission drew up a range of proposals on the basis of article 40(2) of the treaty. At the end of the transitional period for the common market in 1962, the main package of measures based not surprisingly on a compromise involving cereal prices was agreed. In the same year the European Agricultural Guidance and Guarantee Fund was set up which covered the main CAP expenditures. Although the fund was at first financed jointly by the MSs and the EC, after the struggles between de Gaulle and the Commission the fund was absorbed into the EC budget. The support prices were steadily increased with the justification that they were enabling farm families to have a just standard of living.

### 6.1.2 CAP REFORM

After the growth of agricultural surpluses, internal and external pressure for reform of the CAP finally began to bear fruition. From the early eighties support prices were not raised every year, a new development and in 1984 the quota scheme for dairy products was introduced with the intention of reducing surpluses. The Delors Commission managed in 1988 to put controls on agricultural spending as part of the changes in the EC budget, the set aside scheme for arable crops was also concluded in the same year. The Delors II package 1992 led to a council decision to control agricultural expenditure in 1994. The MacSharry Reform was finally agreed in 1992 with the EC under pressure from the United States. This reform was considered to be the beginning of a new way forwards with agricultural prices being left alone and instead farmers being provided with direct payments as support. Again the aim was to ensure that production was decreased and also amounts exported. The reform envisaged more major price cuts than the council was willing to permit and a more moderate reform was the result.

The agenda 2000 reform (1997) was the logical result of the weakened MacSharry Reform. Despite the reform there was an increase in productivity and increased competition in both internal and external agricultural markets, which combined with the Uruguay Round Agreement for Agriculture, meant that there was a real danger of 'new market imbalances' if prices remained at their present levels.<sup>6</sup> This along with the BSE crisis, and pressure for environmentally friendly approaches to farming made improvements seemingly inevitable. The WTO round scheduled for 1999 added pressure for more changes. The Agenda 2000, as it was finally agreed, was much watered down and left several problems remaining, 'It delays the dairy reform until 2005/06. It reduces the cut in support price of cereals from 20% to 15%. It introduces again a costly set-aside rate of 10% for all the 7 years. It re-adjusts the beef reform to allow for the possibility of ad-hoc intervention buying. With the overall aim to "stabilise" the budget, the delays were preferred to other more effective options . . . Agricultural trade

<sup>3</sup> Minutes of Evidence, Agricultural Committee of the House of Commons, session 1997-8. Second report CAP Reform: AGENDA 2000, volume 1, p.1.

<sup>4</sup> *ibid*

<sup>5</sup> See note 2 Tracy (1997) p.96

<sup>6</sup> Pezaros. P. *The Agenda 2000 CAP reform agreement in the light of the future EU enlargement* (1999) Maastricht, EIPA discussion paper p.3

and intervention schemes will continue to depend on the markets, both internally and externally.’<sup>7</sup>

A somewhat jaded perspective on the reforms is shown as follows; ‘ . . . moreover, in a further tactic to delay reform at the Brussels summit in October 2002, the French president Jacques Chirac and the German Chancellor, Gerhard Schröder brokered a deal to maintain a ceiling on agricultural spending until 2013. the deal in effect blocks the prospect of introducing any substantive change in the common agricultural policy until 2006, and delays any meaningful concessions until at least 2012 . . . The mid term review of the CAP offers at least an opportunity to set a new course. While there are signs of positive elements in the proposals put forward by the Commission, their approach to de-coupling (de-linking subsidies from production) raises serious problems. With de-coupled payments, the traditional export subsidy will disappear only to be recreated in another guise-the hidden export subsidy. De-coupling on the current model, as supported by the UK and Sweden, is a cosmetic exercise, designed to bring the EU into compliance with the letter of WTO law, while violating the spirit of free trade. In a cynical move the Commission is proposing to shift the bulk of domestic support for agricultural production into the so-called green box - a mechanism devised by the USA and EU during the Uruguay Round of trade talks. Free of tight disciplines, the green box allows farm income aids such as direct payments that rise with the size of farm and level of past production, and compensation to producers for low prices. These payments may perpetuate surplus production and export dumping - and so are clearly trade-distorting but they are currently exempt from any cuts agreed in the agriculture negotiations at the WTO. Bringing greater benefits to large corporate agriculture at the expense of small family farms, de-coupled direct payments would also reinforce the inequitable nature of CAP spending.’<sup>8</sup>

The MSs were, it seems, responsible for some of the watering down of the Commission’s initial proposal for Agenda 2000. The result was the so called Mid-Term Review reform 2002-2003 which some have called the most radical of the reforms to date. The Mid -Term Review resulted in the following changes: ‘single farm payment system which will no longer be linked to the volume of production; Member States can maintain a limited link between subsidy and production only under well defined conditions; these subsidies will be linked to the respect of environmental, food safety and animal welfare standards; a strengthened rural development policy with more EU money; the single farm payment system will enter into force in 2005, but Member States can delay this to 2007; reduction in direct payments (“modulation”) for bigger farms to finance the new rural development policy; several other modifications of the market policies of the CAP in the areas of milk, cereals, rice, durum wheat, nuts, starch potatoes and dried fodder.’<sup>9</sup>Pressure applied by Germany and France prevented the total break being made between farmers and their production level.<sup>10</sup>

The CAP has enjoyed plenty of political support from its beginning and still today several of the MSs of the Union and their main political parties remain strongly in favour of a generous CAP. In particular certain conservative parties have shown themselves strongly supportive of the farmers,<sup>11</sup> this is particularly true of Germany where the CDU are aware of the Catholic backgrounds of its farmers who generally support the CDU. This appears odd considering that Germany is the major paymaster of the Community and is also very industrialised, but helps

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<sup>7</sup> See note 6 Pezaros, P. (1999) p.22

<sup>8</sup> Leadbeater J. of Oxfam International. *EU hypocrisy Unmasked: Why EU Trade policy hurts development* in SME Union ‘the Entrepreneur’ (European People’s Party of the EP group of MEPs supporting SMEs) June 2003 No 7. p7-8

<sup>9</sup> EurActiv website (22. 7.2003) *CAP Mid-Term review background*. <http://www.euractiv.com/de/gap/cap-mid-term-review-not-updated/article-109964> background section

<sup>10</sup> *ibid*

<sup>11</sup> See note 2 Tracy (1997) p.89



to account for Germany's acquiescence to the costs of CAP. Under Chancellor Kohl, Germany used for the first time its empty chair rights to veto a cut in cereal prices. The reunification changed the situation and subsequently Germany became more favourable towards reform.<sup>12</sup> France has always supported CAP and stood up for the principles of it and fought against any mention of reform. French presidents and governments are uneasy about opposing the farmers and in the face of strong farming disapproval have shown themselves likely to oppose the offending reform proposals rather than to confront the farmers. The British have always advocated reform of the CAP. The continuing importance of the CAP to MSs and the differing MS attitudes towards it was revealed in the Italian delegation's position in the 2002 run up to the Mid-Term Review. The document stressed the support of the Italians for the CAP whilst also advocating greater national competences.<sup>13</sup> Interestingly it states that there appeared to be three main groupings of MSs in the Council. The first group were in favour of the CAP and are against any major changes. This group was described as being the largest with 'many MSs',<sup>14</sup> which received a lot of revenue from the CAP as it was. A second group was described as having little sympathy for the CAP and wanting to speed the attainment of market conditions. The last group seemed to place environmental issues high on the agenda and the welfare of animals. It appeared likely that France, Spain and probably Germany were in the first group, the UK in the second and the Scandinavian countries in the third.<sup>15</sup> Although it was not clear from the text whether the membership of more than one group was possible, it would seem likely. Italy would appear to have been positioned between the first two groups, favouring positive change to the CAP but not scaling down.<sup>16</sup>

Arguably the CAP has been slowly moving to be more under the influence of the MSs via a process known as re-nationalisation, '... the new support regime, having separated support and market prices, has prepared the ground for more national influence on social and environmental measures ... small steps in the direction of more national influence have been made: increasing Member States' influence can in some policy areas be justified by the principle of subsidiarity.'<sup>17</sup> The possibilities for so called 'envelope payments' (lump sums of money are provided to the MSs to distribute themselves which allows them greater leeway in its distribution and application,) to be made to MSs allows them greater room for manoeuvre in the implementation of the CAP. Indeed the optional top up payments which New Member States (NMSs) could pay to their farmers to bring them up to a level of income bordering on that of the MSs, appeared to allow and train the NMSs in extending and practicing national influence in agriculture. It is true that these amounts were to be reduced over time, but that they were to be present from the start of the NMSs membership, which seemed indicative enough of the trend to lower the cost to the EC budget in the short term, MSs can help their farmers separately. This process was also mentioned by the Italian delegation under the notion of 'subsidiarity,' as the following shows 'market policy needs to incorporate more flexible instruments enabling individual Member States – in a framework of increased subsidiarity – to boost market support for farms that fulfill specific quality, environmental and employment requirements.'<sup>18</sup> It seems hard to interpret this statement as being anything but a gradual move towards some re-nationalisation. If this continues to be the case then it would be a return to the situation prior to the de Gaulle crisis. Since it has been said that there are common policies in

<sup>12</sup> See note 2 Tracy (1997) p.90

<sup>13</sup> Council of the European Union. (2002). 2615/02 Italian delegation. Agricultural policy: the run-up to the mid-term review of Agenda 2000 p.9

<sup>14</sup> See note 13 Council of the European Union. (2002) 2615/02 p.5

<sup>15</sup> *ibid* p.5

<sup>16</sup> *ibid* p.5

<sup>17</sup> Kjeldahl, R. *Reforming the Reform? - The CAP at a watershed* (1994) in Kjeldahl, R. and Tracy, M (eds) *Renationalisation of the Common Agricultural Policy?* (1994) La Hütte, Institute of Agricultural economics/Agricultural Policy Studies p.5-22 p. 21; 22

<sup>18</sup> See note 13 Council of the European Union. (2002). 2615/02 p.8

areas where the MSs simply do not trust each other at all,<sup>19</sup> optimistically maybe the CAP is gradually losing this quality, and years of harmonising their systems have possibly removed many of the possibilities of cheating. Maybe the CAP can be allowed to be gradually less 'common' as it gets less important. The general desire of the MSs and the Commission appears to be that agriculture should take a back stage role in the Community and free up staff and resources, political as well as budgetary for more relevant pressing and profitable integrationist sectors. Thus the CAP is no longer desired to be a core item of community activity by many of the political actors, it served its role in furthering integration and can be dealt with differently.

## 6.2 DG AGRICULTURE

The DG is said to be in charge of implementing one of the two 'policy bedrocks' of the Treaty. Their establishment was required to be achieved within a twelve year period.<sup>20</sup> Thus it is one of the oldest DGs in the Commission and has enjoyed a reputation as being both conservative and traditional. The DG has vertical or rather sectoral responsibilities insofar as it is 'focused' on the agricultural sector.<sup>21</sup> It is also considered to be one of the DGs which is dealing with a policy area where considerable power had been transferred to the Community from the MSs.<sup>22</sup> The DG has more executive powers than most and has a role of being an 'overseer of administration undertaken by agencies in the MSs.'<sup>23</sup> It is also one of the main paying DGs and much of its work is geared to implementing the CAP and making the necessary payments. Throughout its history most of its officials have been working on 'administering the complex CAP programmes.'<sup>24</sup>

A snap shot of the DG in the 1960s was provided by Coombes.<sup>25</sup> He describes how Commissioner Mansholt enjoyed good relations with the Director General to such an extent that his cabinet were primarily involved in matters external to the DG. This state of affairs is remarkable given the state of antagonism or at least unease that appeared to exist between the Cabinet and the DG recently, where it was said that once a month a circular was sent from the Director General forbidding the officials to have direct contact with either the cabinet or the Commissioner.<sup>26</sup> The relationship which Mansholt enjoyed with the Director General was described as being like that of the partisan, loyalist organisational spirit of the early days of the Commission.<sup>27</sup> The DG was likely in its early days to have been run along the partisan lines with European enthusiasts predominating. Later the Cabinet probably separated the Commissioner from the DG, much along the present lines.<sup>28</sup> Initially the officials were probably less specialist than they later became. There would appear to have been a development of the Commission including the DG into a 'porous' organisation with seconded officials from the MSs joining. This seems to have heralded a more general increase in the MSs promoting their representation within the Commission.<sup>29</sup> Arguably, in the short term, two of the main functions of the Commission, the meditative and the initiative functions, were strengthened by the

<sup>19</sup> Interviews with DG Officials: DG REGIO

<sup>20</sup> Nugent, N. *The European Commission*, (2000) Houndmills, Basingstoke, Palgrave p. 36

<sup>21</sup> *ibid* p.145

<sup>22</sup> *ibid*

<sup>23</sup> *ibid*

<sup>24</sup> See note 2 Tracy (1997) p.84

<sup>25</sup> Coombes, D. *Politics and Bureaucracy in the European Communities* (1970) London, Allen and Unwin p.256

<sup>26</sup> Interview with Commission Official: DG AGRI

<sup>27</sup> See note 25 Coombes (1970) p.256

<sup>28</sup> *ibid* p.257

<sup>29</sup> *ibid*



addition of flexibility and inventiveness combined with the organisation being 'loose, open ended system of organisation.'<sup>30</sup> However values and loyalties multiplied as well leading finally to 'bureaucratic means of preserving equilibrium and consistency.'<sup>31</sup> The importance of agriculture and the DG in the early community explains the high level of political drama that it invoked between de Gaulle and Hallstein.

Recently the DG has been said to have a 'broken backed policy'<sup>32</sup> by which is meant that the CAP is ceasing to be the most important and certainly not the core of the Commission anymore. The BSE crisis apparently led to a weakening of Commissioner Fischler in the Commission and resulted in the transfer of food and consumer health to the Commissioner for Consumer Affairs.<sup>33</sup> He was further weakened over the Rural Development issue after a dispute with the Commissioner for Regional Policy.<sup>34</sup> Whilst the Agenda 2000 possibly helped restore his position he was unable to pursue his desired integration of agricultural and rural policy.<sup>35</sup> During the 1990s the DG was perceived to be not adopting a coherent approach to policy making needs.<sup>36</sup> The DG was seen as being wholly the wrong organisation to even begin to create and nurture an integrated rural approach, despite the Commissioner's declarations.<sup>37</sup> The DG was declared to have 'a poor track record on managing markets', although the national civil servants on the management committees were seen to have supported this weakness.<sup>38</sup> It was described in 1997 as having 'clearly lost most of its battles'.<sup>39</sup> The Mid-Term Review was perceived as a master coup by the Commissioner and to have boosted the DG's position in the Commission.

## 6.2.1 THE CAP PROCESS ACTORS

### 6.2.1.1 POLICY MAKING BACKGROUND AND THE MSs

Farmers are considered to be a pretty unified and cohesive social group, particularly in comparison with the public as a whole. Taxpayers and consumers are not easy to mobilise and are less likely to mobilise themselves.<sup>40</sup> Farmers are directly affected by any agricultural decision as are the larger rural communities around them.<sup>41</sup> They are likely to be extremely well informed about any governmental moves to in anyway damage their interests, and they are organised at a political level<sup>42</sup> so that politicians appear to prefer to placate this group of voters although it is probably at the cost of the electorate as a whole. Using pricing mechanisms seem to be less resisted in general by consumers than large payouts from the tax payer.<sup>43</sup> This changes when large surpluses attract negative media attention to the policy concerned, then more independent and controllable amounts paid by the tax payer may seem a better solution.<sup>44</sup> More or less this is what happened in the Community, with hidden price mechanisms

<sup>30</sup> See note 25 Coombes (1970) p.258

<sup>31</sup> *ibid* p.259

<sup>32</sup> Interviews with Commission Officials: DG AGRI

<sup>33</sup> See note 2 Tracy (1997) p.83

<sup>34</sup> *ibid* p.84

<sup>35</sup> *ibid* p.84

<sup>36</sup> See note 3 Agricultural Committee of the House of Commons, session 1997-8 p.142

<sup>37</sup> *ibid* p.118

<sup>38</sup> *ibid* p.224

<sup>39</sup> *ibid* p.155

<sup>40</sup> Nedergaard, P (1994). *The Political Economy of CAP Reform*. in Kjeldahl, R. *Reforming the Reform, The CAP at a watershed* in Kjeldahl, R. and Tracy, M (eds) *Renationalisation of the Common Agricultural Policy?* (1994) La Hutte, Institute of Agricultural economics/Agricultural Policy Studies p.94; 95

<sup>41</sup> *ibid*

<sup>42</sup> *ibid*

<sup>43</sup> *ibid*

<sup>44</sup> *ibid*

being used until the surpluses forced a debate to start which led gradually to the de-coupling of payments from productivity levels of farmers, 'All in all, it seems that the influence of the farmers on the political decision makers plays a more important role for the countries' attitude towards a restructuring of CAP than countries' net economic benefits.'<sup>45</sup>Politicians dislike the technicalities of the CAP and at the same time favour them. It is argued that transforming political decisions into bureaucratic technical ones makes the policy appear more objective. Officials confirmed that the more technical the document the less it is changed by the politicians; this is the case with many of the so called comitology regulations.

Since the inception of the CAP, unanimous voting in the Council of Ministers has prevailed, defying often the existence of majority voting procedures, ministers tend to negotiate until overall agreement is reached.<sup>46</sup>This can lead to an increase in package deals and compromise so that all MSs get something out of the proceedings and therefore vote positively. This is said to have led to a steady increase in support for farmers. The desire of ministers to get the best deal for their own farmers whatever the cost to the Community as a whole has ratcheted the costs of the CAP up.<sup>47</sup> The insularity of the different sectors from one another and the absence of any real EU ministry of finance to check the activities of the ministers reinforced this tendency. The various groups in the sector, as in other sectors, can be expected to find more in common with those involved in their sector than with those without, even with their national ministries. Thus the DG and the agricultural ministers and all their officials can be expected to act in a fairly cooperative manner in supporting agricultural interests. This melting down of the institutional barriers between the Council and the DG is not complete but it is there and adds to the upward push on CAP support levels. This is discussed further under the Policy Network section.

The MSs bureaucracies already have considerable power over implementation and this is likely to increase with the reforms which will benefit their bureaucracies<sup>48</sup>, 'in other words, the arsenal available to individual MSs to take specific national measures or adopt alternative ways of implementation has increased. This will increase national influences on the CAP.'<sup>49</sup> Directives been favoured rather than regulations since 1993 and this will extend the already very real power over implementation which the MSs have, which allows for full scale 'redefinition of policy.'<sup>50</sup>The process of re-nationalisation and the increasing use of high level political decision making also appear to reflect the growing influence of the MSs. The MSs have always been involved in the CAP and there are signs as mentioned above that they desire to and are extending their influence.

#### 6.2.1.2 LOBBYISTS

The farming lobby has proven to be of considerable influence to the DG over time and helped it to consolidate its position in the Commission.<sup>51</sup>The French government could almost be considered to be a major lobbying force for the DG as well, or rather as a "political ally".<sup>52</sup>The Commission is known to rely extensively on lobbyists to supply it with the information it needs to generate effective policies and to supplement the information provided by the MSs it is supposed to be overseeing. Involvement of stakeholders is also important for the

<sup>45</sup> See note 40 Nedergaard. (1994)

<sup>46</sup> *ibid* p.100

<sup>47</sup> *ibid* p.99

<sup>48</sup> *ibid* p.87

<sup>49</sup> *ibid* p.87

<sup>50</sup> *ibid* p.87

<sup>51</sup> Stevens, A and Stevens, H. *Brussels Bureaucrats?* (2001) Basingstoke, Palgrave p.205

<sup>52</sup> See note 51 Stevens, A and Stevens, H (2001)



Commission in its drive towards transparency. But there have been allegations that the DG is too close to the farming lobby and that the close and durable contacts that the DG has enjoyed with lobbyists needed to be changed. Implicitly the resistance to reform that the sector has shown would appear to have been linked to the DG's resistance.<sup>53</sup> Thus the policies for the sector and the DG appear to have a strong relationship, with both being involved in the others fate. The market divisions of the Commission have been described as being protective towards their sectors and the whole DG has been noted for being farmer oriented.<sup>54</sup>

### 6.2.1.3 DG AS A BUREAUCRATIC ACTOR

The Bureaucrats are considered to have a large influence on agriculture owing to the technocratic input and the wealth of detail required for the majority of decision making.<sup>55</sup> They are thought to in some ways compete not only with their fellow bureaucrats but also with the politicians involved for control over decision making. Far from the bureaucrats gaining relatively few benefits from extending their control the opposite appears to be the case. Major aims of the bureaucrats are said to be 'to increase their power-base, their responsibilities, staff and career prospects. These goals are best achieved the more complex and technical agricultural policy is, the more important agriculture is as an economic sector, the more agriculture is governed politically rather than by market forces and the more technical-bureaucratic decisions are legitimised by the involvement of the agricultural interest organisations in the decision making process.'<sup>56</sup> The power alleged to be wielded by the specialists within the DG of whom there were many was considerable, and their knowledge of the complex details of certain support regimes was often utterly unique, in one case only one individual within the DG and within the EC was said to fully understand one of the support regimes, which logically left both him and his unit in a position of considerable power.<sup>57</sup>

The reforms of the agricultural sector can be expected to increase rather than diminish the power of the bureaucrats.<sup>58</sup> This somewhat paradoxical fact owes its origins to a more complex list of calculations and bureaucratic tasks which will have to be performed as a result of the reforms.<sup>59</sup> The basic rule of thumb appears to be that the more tasks that there are to be performed the more bureaucratic units will be required, at the DG level and in the MSs. The CAP has been stated to have become more complicated despite the stated aims of simplifying it and this requires that more officials and not less be involved in it.<sup>60</sup> Each CAP compromise appears to have generated matching complexities. The reforms have resulted in de-coupling, yes, but not to the point of removing the linkage to production. The headage payments on cattle, sheep etc which are now paid still allocate funds according to the number of farm animals a farmer has, and remain a link to production. Milk is still quota oriented and arable crops remain subsidized in terms of price, albeit at a lower level and direct payments can be made to prevent farmers losing out.<sup>61</sup> The fact that some price support remains alongside direct payments obviously requires more not less officials to implement.

<sup>53</sup> See note 51 Stevens, A and Stevens, H (2001)

<sup>54</sup> See note 2 Tracy (1997) p.84

<sup>55</sup> See note 40 Nedergaard. (1994) p.95

<sup>56</sup> *ibid* p.95

<sup>57</sup> Interviews with Commission Officials: DG AGRI

<sup>58</sup> See note 40 Nedergaard. (1994) p.86

<sup>59</sup> *ibid* p.87

<sup>60</sup> Interviews with Commission Officials: DG AGRI

<sup>61</sup> See note 3 Agricultural Committee of the House of Commons, session 1997-8 p.199

The DG officials could be expected to oppose reform and change if it is in favour of more 'market orientation',<sup>62</sup> and also if they have developed over time loyalty to their regime which they are often specialists having worked in the same area for up to thirty odd years. They are also said to benefit from 'continuing and building up agricultural protectionism because they gain fewer benefits from taking general economic and political considerations into account,'<sup>63</sup> than the politicians. But if at some point the pressure mounts from their bureaucratic colleagues, or from the political head of the DG, then they can be expected to protect themselves by allowing or even encouraging reforms. Too many conflicts with other DGs and the Commission itself are said to have led the DG towards its apparent acceptance and endorsement of the reform ideal. These conflicts were said to be 'threatening to damage its influence, prestige etc.'<sup>64</sup> That said since the date of the previous quote the DG has entered into several conflicts with some DGs and found some interesting new partners in others.<sup>65</sup> Furthermore the methods used by DG Agricultural officials to protect their clients represent a surprisingly effective rearguard action. Some farmers are said to be better off as a result of the reforms than they were before.<sup>66</sup> Furthermore it is stated that the reforms have resulted in a higher bill being paid by consumers and taxpayers rather than a lower one, 'It was recently reported in Agra Europe that Commissioner Fischler has confirmed that switching to greater use of direct payments will increase the cost of CAP measures.'<sup>67</sup>

### 6.3 THE STRUCTURE OF THE DG

The DG the largest DG in the Commission, employs around one thousand members of staff. It is divided up into eleven different directorates which reflect its size and complexity, see below.<sup>68</sup> The fact that there are three deputy Director Generals when some DGs have only one or none as is the case of DG ENV also emphasises this point. The DG is said to be split between the CMO (Common Market Organisation) units which monitor the markets and price levels, the horizontal units which administer the DG, the units now responsible for the payments and lastly the other units which include those involved in the new rural aspects of CAP. According to sources there is a little communication between the various parts of the DG which is maybe partly due to its size. Managerial task forces are set up to deal with new tasks like the Agenda 2000 reforms and those of Mr Kinnock. The co-existence of reformed policies alongside the old ones for a period of several years as one system is replaced by another has arguably generated a lot of friction within the DG, and overwork for the management who are called upon to perform several extra tasks without any significant extra resources.

Some of the characteristics of the DG owe their origin to the sector itself, the range of directorates reflects the various regimes and tasks the DG is called upon to implement:

#### DG AGRI ORGANIZATION.

Directorate A.I -	International affairs I, in particular WTO negotiations
Directorate A.II -	International affairs II, in particular enlargement
Directorate B -	Relations with other institutions; communication and quality

<sup>62</sup> See note 40 Nedergaard. (1994) p.95

<sup>63</sup> *ibid* p.96

<sup>64</sup> *ibid* p.96

<sup>65</sup> Interviews with Commission Officials: DG AGRI, DG Environment has been quite positive about the measures taken by Commissioner Fischler towards sustainability, although it has to be said that there were some Officials who are less positive.

<sup>66</sup> *ibid*

<sup>67</sup> See note 3 Agricultural Committee of the House of Commons, session 1997-8 p.165

<sup>68</sup> Commission website of DG Agriculture 2003 -2004



Directorate C -	Markets in crop products
Directorate D -	Markets in livestock products; specialised crops and wine
Directorate E -	Rural development programmes
Directorate F -	Horizontal aspects of rural development; Sapard
Directorate G -	Economic analyses and evaluation
Directorate H -	Agricultural legislation
Directorate I -	Resource management
Directorate J -	Audit of agricultural expenditure

The growing importance of auditing and financial control is shown in the directorate J which is a relatively new addition. The role of external issues in the workings of the CAP and the DG is shown by the first two directorates, directorate F can be added to this group as SAPARD (Special accession programme for agriculture and rural development) was primarily used in preparing the New Member States for accession to the Union. Thus six from eleven directorates are no longer directly involved in CAP implementation. The fact that directorates J, I and B are dealing with internal issues again emphasises the present preoccupations of the DG, fending off external problems and attempting to ensure that internally the DG is secure from any further fraud and that it is able to effectively compete with the other DGs and Community organisations. Personnel issues have also seen their importance reflected in the DG, although some of the officials considered working in personnel to be far from optimal, although in the Commission as a whole the two booming sectors are the financial control and personnel sectors

### 6.3.1 MS INFLUENCE IN THE DG

During Commission slow downs the MSs have extended their influence into the DG. After the Hallstein Commission the Commissioners became increasingly MS oriented.<sup>6970</sup> Recently, in relation to agriculture, the Commission has been stated to be another institution full of 'veto points' primarily for the MSs and to be considered in this respect similar to the Council, 'Although the Commission is a collective body, it divides along national lines.'<sup>71</sup> And '... even within the Commission there are several veto points.'<sup>72</sup> So the MSs have been described as having considerable power within the DG itself<sup>73</sup> let alone within the Commission as a whole where the Commissioners as well as cabinet members are suspected to be increasingly promoting their countries' requirements.<sup>74</sup>

The fact that around 50% of Community funds are earmarked for agriculture has attracted commensurate political interest from the MSs. Their national interests are often explicitly promoted and defended in the DG at every level. One favoured approach which was apparently present in DG AGRI, was to attempt to influence technocratic processes by placing nationals or seconded officials in key positions in the DG. Thus even down to the level of the

<sup>69</sup> Daugberg C. *Reforming the CAP: Policy Networks and Broader Institutional Structures*. In *Journal of Common Market Studies* Vol.37, No 3 September 1999 p.422;

'Although the Commission is a collective body, it divides along national lines. Until the mid-1960s, the Commission consisted of Commissioners who had been there since the creation of the EC. They had idealistic attitudes towards European Integration. Thereafter, a new generation of Commissioners took over. These "Commissioners and their staffs (were) increasingly conscious of their separate national identities and loyalties". Compared to the first generation, the Commissioners of the early 1990s were also more nationalistic... So, even within the Commission, there are several veto points.'

<sup>70</sup> Page, E. *The People who run Europe*. (1997) Oxford, Oxford University Press p.36 referring to the Spierenberg Report 1979; 'Spierenberg emphasised the importance of the national dimension as a major cause of fragmentation above all in the College of Commissioners.'

<sup>71</sup> See note 69 Daugberg (1999) p.422

<sup>72</sup> *ibid*

<sup>73</sup> Interviews with Commission Officials: DG AGRI

<sup>74</sup> *ibid*

Desk Officers national political needs were met. The DG was described as being divided down the middle over certain agricultural fundamentals, into groups supporting importing countries like Italy and those supporting exporting countries like Ireland.<sup>75</sup> A great deal of internal discussion allegedly occurred which often led to weak compromises which do not represent the European perspective. The 2002 import quotas were said to demonstrate that the two nationalities listed above, throughout the DG took their nationalities' side and actively promoted it.<sup>76</sup> Due to the amounts of money involved some officials have described their work in the DG as highly political and involving the MSs constantly.<sup>77</sup> For a lot of the officials work, the MSs have to be taken into consideration, and the officials anticipate comments and complaints in advance, too much so according to some.<sup>78</sup> The French are said to want to have one of their nationality in the position of Director General whilst the Germans aimed to set as many of the nationals in positions of Heads of Unit. The Irish and Italians are supposed to have competed for the positions of deputy Director General.<sup>79</sup> According to some of the officials little discretion is nowadays left to the DG as the MSs are scrutinising every aspect of legislation and every decision originating in the DG. The French have traditionally been the net beneficiaries of CAP and it is no surprise to find that from 1958-1999 the Director General was French. The importance of the DG for the Mediterranean countries is apparently reflected in their presence in the hierarchy.

### 6.3.2 BUREAUCRATIC

For most of its history the DG has been dominated by the French management style and therefore very hierarchical. With the change over from a French to a more Mediterranean style, there have been few noticeable changes. Examples of the recent rigid hierarchical approach were provided by officials who stressed that the management insist that, every piece of information must pass up through the signatories and down again to reach another official or manager.<sup>80</sup> The fact that many officials allegedly used e mails to circumvent this requirement was frowned upon and unlike in other DGs where alternative methods of communication are used to 'formalise' the use of e mails, DG AGRI supposedly refused to use them.<sup>81</sup> Decision making was apparently made at the highest possible level as were payment decisions. This was shown by the fact that the Director General met with the directors and deputy Director Generals for discussions once a week but decision making was allegedly made by the Director General and his deputies alone. In some DGs the directors have a more direct input into decision making. Personnel issues were said to be dealt with in once a week meetings between the Director General and his deputies and the personnel department.

On the positive side some stated that whilst the hierarchy was rigid and slow it was able to react with surprising élan and efficiency when it wanted to.<sup>82</sup> Some DGs were described as family run businesses in their style and attitudes, like DG FISH whilst DG AGRI was described as a multinational. The prevalence of bureaucratic procedures was to be expected in an organisation involved in making large payments on a regular basis. It was also to be expected in an extremely large organisation required to implement intricate, often technocratic policies. Maybe it was also inevitable in an organisation that contained a wide variety of nationalities and administrative cultures, in order to preserve some coherence. Recently, though,

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<sup>75</sup> Interviews with Commission Officials: DG AGRI

<sup>76</sup> *ibid*

<sup>77</sup> *ibid*

<sup>78</sup> *ibid*

<sup>79</sup> *ibid*

<sup>80</sup> *ibid*

<sup>81</sup> *ibid*

<sup>82</sup> *ibid*



the DG seemed to have collected so many check and balances that a form of gridlock had finally emerged.

The DG seemed to have become even more bureaucratic, probably to try to deal with MS influence and rein in the Policy Networks, 'horribly bureaucratic' was the description of the DG by one official, who appeared to shudder at the memory.<sup>83</sup> Some of the officials interviewed were clear that much of the bureaucracy in the DG was not just counter productive it was also often inefficient, unjustifiable.<sup>84</sup> As is the case in other DGs there was also allegedly tension between the hierarchy and its own immediate superiors, the Cabinet and the Commissioner. The latter had allegedly found the DG problematic when he had pressed for reforms.<sup>85</sup> The Director General was said to have had problems communicating with the Commissioner Fischler and this had only added to the general tension. Extra bureaucracy was added to the mass already present via the requirement that officials are not to communicate directly with the Cabinet or the Commissioner, every document or comment had to pass via the hierarchical interface.<sup>86</sup> This was not good for efficiency as most of the DGs stress that ease of access between cabinets and officials are essential for fast, accurate and effective decision making. In the long run the DG itself benefits when the Cabinet and the services work closely together. Bottlenecks and delays were laid at the door of the hierarchical structure.<sup>87</sup>

### 6.3.3 STAFFING

The turnover in staff in one unit according to one source is somewhere in region of 50% over 2.5 years, this was specific to his unit.<sup>88</sup> This was similar to the level in DG ENV which had 25% change annually. A situation of demoralisation existed in DG ENV and the same was said of DG AGRI, thus the figure supported the general statements of officials. The DG was no longer considered to be the place to be to make a career and the fact that its policy was considered to be broken backed was said to be a key reason why officials avoid working there.<sup>89</sup> Many officials are considered to enjoy a challenging work atmosphere where they can see that their work is having a positive effect, this was no longer said to be the case in DG AGRI. According to the personnel department the DG was understaffed and over worked. However the same source stressed that the so called 'negative priority' list which DGs were asked to draw up to indicate policies which could be dropped or toned down had failed to be completed.<sup>90</sup> None of the DGs were willing to contemplate a reduction in their competences and the dossiers which they had, no doubt for reasons of status and influence in the Commission. Dropping a dossier is seemingly equivalent to dropping a key element of defence in the endless struggle between DGs.

### 6.3.4 CHANGES IN DG STRUCTURE

There have been surprisingly few changes to the structure of the DG although there have been calls for change. The Court of Auditors made a report in 1990<sup>91</sup> which called for some fundamental changes in the DG's methods of organisation; these recommendations were supported by the European Parliament and ignored by the DG as the next report made in 2003 repeated some of them. In the absence of reorganisation and in the presence of unresolved

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<sup>83</sup> Interviews with Commission Officials: DG AGRI

<sup>84</sup> *ibid*

<sup>85</sup> *ibid*

<sup>86</sup> *ibid*

<sup>87</sup> *ibid*

<sup>88</sup> *ibid*

<sup>89</sup> *ibid*

<sup>90</sup> *ibid*

<sup>91</sup> Court of Auditors. Special report No 9/2003. 2003/C211/01

conflicts prior to the reorganisation planned for 2004 the DG was said to be quite a tense place.<sup>92</sup> Some of the following reasons were given for the tension: very different views on management styles which run broadly along nationality lines. Tension since too much power was considered to have been given to the financial control; conflict and general tension owing to the increased workload and problematic staffing policies. The management were stated as not being able to cope with the many tasks they were called on to perform: the enlargement; the CAP reforms; the Kinnock reforms and financial reforms in general; the DG reorganisation etc. There was said to be considerable friction existing between various groups in the DG. Whether the reorganisation would work or not was a moot point, some seemed to think that it was badly thought out, and over rushed and this threw doubt on the probable long term success of it.<sup>93</sup>

## 6.4 GROUPS WITHIN THE DG

One thing which seemed clear about the DG was that there were several groups which had different agendas and competed internally for control over the direction of the DG. The success or failure of a particular group to press home their influence could result in negative consequences for the various clients of the DG. There was allegedly tension between CMO units and the rest; between the traditional CAP officials and those who favoured rural development and what could be called a modern approach to agriculture and the countryside; between officials with what could only be described as various forms of idealism, that of the Commission and Community and those who were first and foremost staunchly loyal to their specific regime (CMO). There was the split between the Mediterranean hierarchical approach and that of the modernizers who supported the Kinnock reforms. The Kinnock reforms aimed to strengthen the control of the college over the DG senior officials and to encourage a merit based hierarchy seemingly along northern European lines. There was apparently a split between those who supported the Commissioner and Cabinet and were career oriented and those who were DG oriented.

### 6.4.1 CMO UNITS

The most dominant and arguably the strongest groups within the DG were until recently those dealing with of the various market sectors. By this is meant the Beef CMO; the Milk CMO, the Sugar CMO. The CMO units were to some extent in control of the setting of prices and rates for their particular commodity. Some 50-70% of the officials in the DG were said to be loyal to the sector and idealists in terms of promoting agriculture.<sup>94</sup> These officials served longest in the DG and often in the Commission as a whole and were considered, until the 1990s, to be the 'kings' of the DG.<sup>95</sup> They were highly respected within their regime and on the best of terms with producers and governments. Many were said to be specialists, officials who knew their technocratic business perfectly.<sup>96</sup> One major EU crisis was reputed to have been avoided because of the quick, decisive action of one Head of Unit.<sup>97</sup> Within the DG there was a tendency for staff to respect an old hand who knows his or her stuff rather than one of the new manager types who were better with people management but are not experts in their

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<sup>92</sup> Interviews with Commission Officials: DG AGRI

<sup>93</sup> *ibid*

<sup>94</sup> *ibid*

<sup>95</sup> *ibid*

<sup>96</sup> *ibid*

<sup>97</sup> *ibid*



sector. The specialists were said not to delegate and not to have a good method of handling their personnel.<sup>98</sup>

Some of the managers serving in the CMO units had held office in them for thirty or more years, they allegedly became the guardians of their commodity and defended it, the producers and their bureaucratic territory from all comers.<sup>99</sup> Outside their area of expertise they were vulnerable, within it they alone knew the information and were thus irreplaceable. These specialists were unsurprisingly allegedly unwilling to either see a weakening of their sector or to allow any organisational changes to occur which would weaken their internal position within the DG and within the Commission as a whole. It is hard not to see these officials as idealists; they had after all devoted the whole of their working lives to their specific sector and set up effective, sometimes too effective regimes to provide security to the producers and productivity for the Community. Their ability could probably be seen in terms of the soaring increases in productivity that the DG was in control of; they seemingly managed to secure the place of agriculture within the Community and the Commission despite the evident need for change. Maybe this could be described as a form of fanaticism and certainly the CMO units have been described as refusing to see the writing on the wall in 1992.<sup>100</sup> Many were no doubt European as well as agricultural idealists and could maybe be argued to have held true to the original ideology of the DG and the CAP. That said there was a sense that the sector loyalties had seemingly increasingly come to dominate.

It is understandable that many officials who often held agricultural degrees, shared a similar French civil service background and years of promoting productive farming along the lines laid out in the treaties resented the moves towards rural development, sustainable agriculture which showed respect for the environment. This was stressed to be an explanation for the loyalty to a sector which can often exist in the Commission.<sup>101</sup> Officials are said to follow a self selection procedure, the Commission chooses officials for the agricultural sector who have an agricultural degree of some description and a desire to work in a similar field. The officials could not therefore be seen to be normal civil servants who could move about relatively freely, they are more limited in their career possibilities.<sup>102</sup> One official was recorded as getting agitated during one DG internal discussion about CAP reforms, he stated that the modernizers were from the cities and did not have a clue about farming reality.<sup>103</sup> Their main policy opponents were said to be the policy people, by that is meant the cabinet and Commissioner and the policy planners within the DG, the task forces set up and maybe also the Director General and his deputies.

#### 6.4.2 'THE POLICY PEOPLE'

That struggling occurs between the services and the Cabinets and Commissioners in several of the DGs is nothing new. Commissioners are aware about their standing vis-à-vis the other Commissioners and their cabinets. They are aware of the unacceptability of certain aspects of their sector and or DG as they are forced to face the criticism directed at them from other sectors. If a vote is lost in the College, then the sector suffers. DG AGRI appears to have had a dearth of allies during the 1990s in the College, if for no other reason because the DG allegedly appeared to be unwilling to face up to realities. The slow, piecemeal progress of CAP reform which kept the budget under pressure could not have been positively viewed by other

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<sup>98</sup> Interviews with Commission Officials: DG AGRI

<sup>99</sup> *ibid*

<sup>100</sup> *ibid*

<sup>101</sup> *ibid*

<sup>102</sup> *ibid*

<sup>103</sup> *ibid*

DGs and sectors which were crying out for more funds and staff. This seems to be confirmed by the general Commission perception of the DG as being 'spoilt and over staffed'.<sup>104</sup> The Commissioner is said to have desired greater reforms and earlier, but been opposed by the DG itself, or rather groups within it. At first the term 'policy people' seems to have included the higher management of the DG but later it became a narrower group.

According to some sources a clear move from inclusive decision making within the DG towards exclusive small task force groups operating in a secretive, tactical manner, took place during the 1990s. The earlier CAP reforms were discussed openly within the DG and opposition taken note of. The later reform, Agenda 2000 was allegedly prepared by a small management task force. The latest Mid Term review was described as being carried out in a highly secretive manner with only a small team of experts close to the Commissioner being involved. Even the top DG management were said to have been excluded from the preparations. In particular the reforms of some of the CMOs and units were said to have been forced by the Commissioner. An atmosphere, increasingly lacking in trust, was said to have ruled between the Commissioner, Cabinet and the DG. Implicitly the DG and the CMO units were alleged to have successfully resisted necessary reforms which dragged the DG and the Commissioner into a bad light. The Cabinet apparently decided to push ahead and circumvent the hierarchy wherever possible, 'problem people' were allegedly ignored to get the policy through.<sup>105</sup> The power of small groups with the right connections was stressed as being a very important means of achieving change and reform in the long established bureaucracy.<sup>106</sup> Ad hoc decisions were favoured by the small groups and a form of strategic behaviour which involved more or less outmanoeuvring external players as well as the DG itself by secret decision making and finally springing the result on all of them before any information could be leaked out.<sup>107</sup> A really effective group or small alliance was said to be one which involves an official in DG BUDGET as well as some in the DG itself and the cabinet level.<sup>108</sup> Such tactics were necessary when dealing with Policy Networks as will be seen.

### 6.4.3 THE GENERALIST REFORMERS

There were said to be two main groups which were involved as reformers, those promoting modernisation of the CAP and pushing for greater rural and environmental elements and those who were in favour of market liberalisation in general and less CAP influence. Officials belonging to these groups were allegedly likely to either not share the exclusive agricultural background that many of the CAP traditionalists had and were also likely to be from a more generalist background. Certainly some officials who were in favour of or pushed for internal reform of the DG were from a generalist background.<sup>109</sup> They were defined as coming from Anglo-Saxon or Scandinavian backgrounds, although it seemed likely that other MS nationals also belonged to their ranks. There was said to be a French 'ruralist school',<sup>110</sup> and the Netherlands were known to support liberalisation and environmental issues whilst both MSs continued to support CAP in general.<sup>111</sup> The Greens in Germany were more than likely to also apply pressure for changes in the CAP. There was described as being a growing rural lobby in the UK, which was considered to be potential 'counter weight to the agricultural lobby' which

<sup>104</sup> Interviews with Commission Officials: DG AGRI

<sup>105</sup> *ibid*

<sup>106</sup> *ibid*

<sup>107</sup> *ibid*

<sup>108</sup> *ibid*

<sup>109</sup> *ibid*

<sup>110</sup> Delorme, H. (1994) *French agricultural policy objectives historical context and current issues*. in Kjeldahl, R. and Tracy, M (eds) *Renationalisation of the Common Agricultural Policy?* (1994) La Hutte, Institute of Agricultural economics/Agricultural Policy Studies p.50

<sup>111</sup> See note 2 Tracy (1997) p.88



would; 'broaden the basis of agricultural decision making' they would represent the many rural interests not addressed by the CAP.<sup>112</sup>

Recently the rural development directorate in the DG saw a strengthening of its resources, but for a long time it was considered to be understaffed and resourced in general and some maintained that this was still the case.<sup>113</sup> The rural development group and campaign were supposedly opposed by both the farming organisations which were in favour of traditional farming methods, and by various elements in the DG which identified heavily with the organisations involved. Curiously enough suggestions were made that rural development may be a useful backdoor method of financing farmers, once the normal CAP channels are closed off, 'the transformation of the CAP must not become merely a system of maintaining current levels of CAP spending by other means, nor should spending on rural policy goals allow any element of subsidy to be linked directly to agricultural production.'<sup>114</sup> The US was known to be content to allow farmers to be quietly supported via this channel so long as the more overt market distortions are removed.<sup>115</sup> Thus it would appear to have been in the interests of the agricultural sector as a whole to move in the direction of rural development as some in the DG recognised. But there may well have been losers insofar as rural development could be targeted more at individual farmers, and thus the quantitative groups who benefited from over production and protection may well have lost out. These were the groups which were traditionally protected by the CMO units within the DG.

#### 6.4.4 MEDITERRANEAN GROUP

Not only were the Anglo-Saxons described as being at loggerheads with the CAP traditionalists, they were also said to be at odds with the hierarchical approach to administration which was supported by officials from Mediterranean countries. The more northern MSs were said to prefer less formal, modern, more efficient means of management rather than the hierarchical Mediterranean one. The differences were seen in the controversy over the Kinnock reforms which were perceived in some quarters of the Commission as alien and unwanted. The introduction of the Kinnock modern management methods were opposed by the DG hierarchy and their unpopularity was allegedly used by the management as a justification for retaining the previous management regime untouched.<sup>116</sup> The Kinnock reforms were said to have been rushed, inefficient and badly managed, but at the same time the previous management structure was described as old fashioned and resistant to change. The Kinnock reforms served as 'a scapegoat for the management deficits and problems.'<sup>117</sup> Arguably the reforming group within the DG were weakened as a result of the reforms.

The Mediterranean model requires a fair amount of personal contacts to be made and used to function at all, which can be quite un-transparent. Arguably the DG hierarchy was based on a French model and only succeeded in functioning owing to the officials' ability, often from the French civil service tradition, who made it work. They shared similar backgrounds and abilities and were able to ensure efficiency. Over time the CAP ceased to attract top quality candidates from a common background as more exciting sectors opened up and so the DG was revealed for the creaking leviathan it was.<sup>118</sup> The possibilities for informal lubrication of the DG were gone and large numbers of officials and groups from other MSs were present in the

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<sup>112</sup> See note 3 Agricultural Committee of the House of Commons, session 1997-8 p.166

<sup>113</sup> Interviews with Commission Officials: DG AGRI

<sup>114</sup> See note 3 Agricultural Committee of the House of Commons, session 1997-8 p.31 and 35.

<sup>115</sup> Interviews with Commission Officials: DG AGRI

<sup>116</sup> *ibid*

<sup>117</sup> *ibid*

<sup>118</sup> *ibid*

structure. The hierarchy allegedly became steadily more rigid over time. Young and old Mediterranean officials were said to adhere to the hierarchy model which was opposed by the modern managerial methods of the Anglo-Saxons in particular.<sup>119</sup> Linked to this group were the CMO technocrats, discussed earlier, the specialists who allegedly managed information not people and opposed the notion of managers who manage people but have little clear knowledge of the facts.

#### 6.4.5 EUROPEAN IDEALISTS

To an extent this group often consisted of the younger officials who placed their idealism for the Community ideals above all, and desired to pursue a career in the Commission as a whole. Whilst older officials also belonged to this group the younger officials were the most outspoken of their Europeanism. The size of the group within the Commission as a whole was set at 30%.<sup>120</sup> According to one source, many officials arrive in the Commission as idealists, become disillusioned cynics and gradually moderate this position as European Realists.<sup>121</sup> This would seem a fair comment, although it has to be stressed that the realists are still more idealistic than their counter parts outside the Commission, and this idealism is abstract and linked to the European ideal. There would appear to have been common ground between the realists and idealists, but little with those who were seen to be waiting out their time to retire. The idealists were sceptical of the sectoral loyalties of the DG and the 'old guard' who allegedly resisted reform and change even if it was in the best interests of the European Project as a whole.<sup>122</sup> They were likely to respect the skills of the specialists as a tool for controlling the MSs and securing Commission dominance over MS administrations. The mastery over technocratic detail was recognised by them as useful but at the same time they were unwilling to tolerate the inefficiency which had all too often allegedly accompanied the specialists.<sup>123</sup>

Rigid hierarchies, stifling bureaucracy and the absence of task and responsibility delegation were the banes of this group. The idealists were concerned with the efficiency of the DG, and expressed their idealism in drives for reform. They stressed that whilst mastery of detail was admirable, some of the details were unnecessary to perform the task effectively.<sup>124</sup> Two years was stated as being sufficient time to master a dossier and the extra years that some individuals spent in becoming the European experts in a certain dossier was inefficient.<sup>125</sup> Implicitly this group would like to see an even more efficient DG and Commission using its resources more powerfully to further the integration model. As career officials they were less tied to DG loyalties and were likely to favour the mobility rules of the Kinnock reforms, whilst at the same time acknowledging that a possible decline in institutional memory could well result.<sup>126</sup> It is worth noting that one of the most complex agricultural regimes in the DG; that of the Sugar CMO, was also allegedly the most resistant towards any reform. It was said that only one individual in this sector really understood it completely. This raised the possibility that reform leading to greater simplicity and transparency are undesirable as they lead to a dilution of the power of certain officials.<sup>127</sup> Thus the complexity is not only unnecessary it is also deleterious to the Commission as a whole.

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<sup>119</sup> Interviews with Commission Officials: DG AGRI

<sup>120</sup> *ibid*

<sup>121</sup> *ibid*

<sup>122</sup> *ibid*

<sup>123</sup> *ibid*

<sup>124</sup> *ibid*

<sup>125</sup> *ibid*

<sup>126</sup> *ibid*

<sup>127</sup> *ibid*



#### 6.4.6 THE AUDITORS AND KINNOCK REFORMERS

One last group which needs to be briefly mentioned is that of the comparative newcomers, the Auditors and those in the personnel department who have added strength to the non CMO units. Whilst being on the surface neutral it was clear from comments made that this group, as newcomers, were not welcomed by the old-timers they have been sent to reform. The resentment of the old-timers was expressed in the excessive priority that the new group are getting, and the new group were not particularly positive of the old fashioned hierarchy which resisted change.

It is evident that the groups will overlap but they do have a position and a core of supporters willing to defend this position. The Commissioner and the Cabinet apparently can and do make use of the divisions within the DG but unless a dossier is political enough to make the Cabinet's attention unavoidable, the management hierarchy seemingly prevents the Desk Officers breaking free to make contact with the Cabinet.

### 6.5 GENERAL DG ORGANISATION INEFFICIENCY

Several forms of inefficiency appear to have existed within the DG, some of which were common to the Commission as a whole and could be labelled as general inefficiencies, others were more DG specific. Staffing policies were one area and the resistance of the CMO units to being reorganised or the CAP to being reformed was another.

#### 6.5.1 GENERAL INEFFICIENCY

Consideration of the Commission departments reveals a surprising array of sources of inefficiencies, which somehow appeared to coincide with extraordinary effectiveness in terms of policy document generation. This was true for DG AGRI as much as for the other DGs studied, which poses a paradox to the observer, the sheer number of inefficiencies should make the organisation a disaster but somehow did not.

The services of the Commission do not seem to have an effective and integrated clerical administrative level. This point was raised by several of the officials working in the DG and seemed odd if not inexplicable to them.<sup>128</sup> Most civil services in most MSs if not all, have a policy making layer, usually relatively thin in which the top experts and highly trained officials work. Under them is a much larger pyramidal structure allowing for an ordered range of graded clerical officials. Here the paper work is attended to; the writing of routine letters; minutes of meetings; planning efficient meetings; ordered filing using uniform filing systems; preparing briefings for ministers etc. the real clerical work of the department concerned in other words. Such tasks require training, and of course repetition to achieve perfection, they do not require extensive academic excellence and policy making ability. Such positions are paid considerably lower than the top policy officials to reflect the difference in ability and task. It is true that officials can work their way up through the British civil service to the policy making ranks, however, given the existence of fast streaming methods and academic qualifications often encouraged if not required for entry into the policy making ranks, the top officials are likely to be top graduates. Time is another factor which ensues that policy making officials are not the same as their clerical subordinates. It is possible to work your way up through the clerical grades but that takes years and the official's time as a policy making official will

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<sup>128</sup> Interviews with Commission Officials: DG AGRI

be considerably shorter when compared to the graduate official who can immediately proceed with promotion through the policy making grades.

The skills required by the policy making grades are those of analysis, sectoral expertise, specialised knowledge and the ability to use it. The Commission is said to be excellent at these skills and MS officials turn to them for advice as towards 'the experts.'<sup>129</sup> These skills are radically different to those required by clerical graded staff. But the policy making staff in the DG were also apparently expected to perform a range of basic clerical tasks which appears to go contrary to the notion of work specialisation. They allegedly have to carry out their own filing system, write their own letters, organise their own meetings and similar tasks. At the same time they are paid vastly more than a clerical official would be. Evidently this is an inefficient use of their highly paid expertise. Furthermore as they have not been trained in clerical tasks they are not going to be as proficient at them as a trained clerk performing them day in day out. This no doubt goes a long way towards explaining the apparently problematic state of the DG's filing and the Commission's as well; a seeming oddity for an institution which prides itself on its institutional memory and possession of expert knowledge. Meetings organised by the officials were alleged at times to be badly planned and coordinated as well as being non informative.<sup>130</sup> Meetings appeared to be little more than an around the table with each official stating their view on a matter, or each MS stating their prepared view on an issue. The discussions were not as useful as they could be if they are present at all. The end result was that more meetings have to be called to allow for the discussion that was missing from the first one.<sup>131</sup> Again the policy making officials organising them were not experienced clerical officers. Without an effective clerical layer, and implicitly the present B grade clerical officials seemed to be insufficient to be that layer, the intended reforms of the Commission were expected to fail, or so it was stated.<sup>132</sup> The Commission was said to be worse at basic civil service tasks like organising and holding meetings, writing briefings and maintaining an archive system than its civil service colleagues, despite the high level of academic qualifications of officials.<sup>133</sup>

The argument provided by some within the Commission for the continuation of the present system was that it takes too long to train clerical staff in their tasks.<sup>134</sup> This appears a rather weak argument given that most other organisations have an effective clerical layer and would find it somewhat bizarre to even contemplate senior managers typing routine letters. There is maybe another argument for the present system in that the dossiers run by the officials are so individual and personalised that it is hard to force a uniform structure on them. The singular nature of Commission work and dossiers often strengthens the individualised methods of achieving ends. There is often no model to follow, a new Commission law structure is just that, new, to some extent unique and uniformity is impossible. The staff come from quite different MSs with quite different clerical systems, and training a clerk in twenty odd different MS administrative systems as well as languages is quite a challenge. A further reason for the inefficient use of expertise is probably that the Commission seems to be limited in the staff it can employ and it would prefer to employ more policy making officials rather than clerical ones, for status if nothing else. Desk Officers did not want to become more civil service like if they could help it.<sup>135</sup>

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<sup>129</sup> Interviews with Commission Officials: DG AGRI

<sup>130</sup> *ibid*

<sup>131</sup> *ibid*

<sup>132</sup> Interviews with Commission Officials: DG REGIO

<sup>133</sup> Interviews with Commission Officials: DG AGRI

<sup>134</sup> *ibid*

<sup>135</sup> Interviews with Commission Officials: DG REGIO



But this means that any bureaucratisation, particularly that including clerical tasks, of the Commission, directly affects the policy makers and slows them down. Maybe this is desirable for the bureaucratic cycle outlined in the theory chapter even though efficiency is lost; it is maybe a cost worth paying if it ensures Commission survival. Another point is that information in the Commission is allegedly used as power and this is maybe another reason for the absence of effective filing systems or clerical staff. The institutional memory of the Commission resides in the heads of the policy making officials. If an official requires information about a previous dossier, he has to apparently locate the individual who ran it and discuss the points with him or her.<sup>136</sup> It is allegedly a waste of time to contemplate using the filing system, even if it is there at all. Thus an alternative filing system is used with officials having to network to locate the previous dossier 'owner' and then to discuss with them the points and to receive some sort of explanation of what filing there is. It is after all often bundled together following the personal desires and methods of the individual.<sup>137</sup> This property based nature of information seemed to work well enough at times, and evidently guaranteed officials considerable power over past and present dossiers. No doubt in internal and Policy networks this information is tradable. Any reforms will have an uphill struggle to deal with this in the absence of clerical grades and their alternative supply of information memory.

The DG apparently had a curiously vague separation between Heads of Unit and Desk Officers however rigid things became further up the hierarchy.<sup>138</sup> This was most clearly seen in the curious management patterns. It was quite possible for officials to be doing the same tasks as another official further up the grading system who was being paid considerably more and probably with more experience and expertise.<sup>139</sup> This was a result of the non alignment of grades and functions which the Commission appeared to be following and also due to the strange promotion system which allowed for progress according to seniority and networking, but seemingly little due to merit. The non alignment system meant that it was possible for an A4 to be working under an A5, who was lower than them in terms of grade and salary. But it also meant that A4s and A7s could and often were working on the same types of tasks. They were all policy making officials and Heads of Unit and Desk Officers could be expected to be doing quite similar work, apart from the personnel tasks which the Heads of Unit were now required to do under the CDR element of the Kinnock reforms which related to career developmental issues. This grade - work incongruence was reflected in the fact that there were apparently no effective, clear job descriptions, expertise was there but who does what was at times a matter of choice.<sup>140</sup>

Grades above Head of Unit were said to be occupied by political appointees.<sup>141</sup> Thus Directors and Director General are allegedly there owing to belonging to the right political party, MS or both. The promotion chances to this level are said to be fixed. The process is said to be 'stitched up,' pre-decided, between the Cabinet, Chefs of Cabinet, permanent representatives of MSs and MSs.<sup>142</sup> Chefs of Cabinet were allegedly given extensive patronage possibilities as they appointed their Cabinets from within the DG or outside. Ability apparently did not have to play a role in their appointment. Some worked their way up through the ranks and then gained their position by serving in a Cabinet. It is quite possible that these individuals are

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<sup>136</sup> Interviews with Commission Officials: DG AGRI

<sup>137</sup> *ibid*

<sup>138</sup> *ibid*

<sup>139</sup> *ibid*

<sup>140</sup> *ibid*

<sup>141</sup> *ibid*

<sup>142</sup> *ibid*

skilled at managing networks as well as their work, but it remains the case that many resented this method of achieving promotion.<sup>143</sup>

The problem of networking and the use of personal contacts as opposed to objective criteria were alleged to be present in the DG.<sup>144</sup> People were apparently given positions on the basis of who they knew and not what they knew. This apparent emphasis on personal contacts worked its way through the system. When an official was asked to organise a team to perform a task they might well end up disregarding the CVs provided and making a choice according to what their colleagues have to say about the officials concerned. Only if nothing was known was the CV likely to be considered.<sup>145</sup> Even for quite basic tasks, decisions about who to allocate a task to would apparently be made on the basis of personal contacts and what was known about the individual concerned and rarely on their qualifications. The enlargement was provided as an example of the DG informal management system at work. A Director and several Heads of Unit were allegedly 'parachuted' into the DG to ensure that the NMSs had some management representation relatively quickly.<sup>146</sup> This might be good for the representative nature of the DG but it seemed to have little to do with merit. The use of 'parachutage' which is to do with having friends in high places, or MSs, was supposed to be diminishing as part of the reforms to enable the Commission to function after the enlargement. The use of it to enable the enlargement was unfortunate, and rather seemed to throw doubt on the stated motives and sincerity of the reforms in the first place.

The absence of effective management of personnel could be seen in some curious phenomena. Firstly the officials were said to have extraordinary freedom of choice as to what they did owing to the lack of management. Which then lead to another fact which could apparently readily be observed in the Commission. Every year 'Start of year Commission work plans' were issued, with fairly detailed lists of what the Commission aimed to achieve in that year. However at the end of the year the report on the Commission's activities during the year was alleged to often bear no correlation to the aims stated at the beginning of the year. This was said to be a standard joke within the Commission as a whole.<sup>147</sup> At a DG level this is likely to originate in the 'failure' of management to manage the work that had to be done, that should be done. But above all this seemingly reflected the dynamic, flexible, extremely diverse Commission, with officials with maximum discretion and not needing management owing to their motivation and loyalty to the Commission ideology and sense of mission. The Commission in such phases needed policy makers and not managers. When slowing down, then turning the senior policy making experts into personnel managers, was useful to slowing the DG down.

During a dynamic phase Commission bureaucracy did not seem to bother the officials, rather the opposite. There was stated to be, at times, an apparent absence of anyone willing to take any responsibility for anything within the DG<sup>148</sup> and the Commission.<sup>149</sup> This occurred alongside quite rigid methods of communication reflected in the system of collecting signatures before a letter could be released. Bureaucracy in the Commission during a dynamic phase seemed to add to the willingness to take risks and generate work, responsibility was apparently passed upwards, and seemingly to no-one, leaving the policy making officials free to be

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<sup>143</sup> Interviews with Commission Officials: DG AGRI

<sup>144</sup> *ibid*

<sup>145</sup> *ibid*

<sup>146</sup> *ibid*

<sup>147</sup> *ibid*

<sup>148</sup> *ibid*

<sup>149</sup> The Committee of Independent Experts First Report on Allegations regarding Fraud, Mismanagement and Nepotism in the European Commission 1999



entrepreneurial. The negative aspects of a rigid bureaucracy were simply not enforced and therefore affected officials far less than recently.

Arguably it was the apparent existence of an atmosphere of opaque competition that existed inside the DG and the Commission, with unofficial networks operating secretly, fostered a lack of trust. No-one allegedly knew who belonged to which network, so maybe your colleague was not all they appeared to be and therefore why should the official support them.<sup>150</sup> It was not even clear if the networks shared the same goals and missions, probably they did not. Clear management structures and lines of accountability and responsibility would have helped alleviate this particular phenomenon. However good management was allegedly not necessarily a priority in the DG or the Commission. Opaque, secretive management structures appeared remarkably similar to diplomatic, intergovernmental methods of doing business. This was probably no accident, the MSs seemingly directly affected the higher management and via their networks could affect management appointments, however, they were unlikely to want it to be too well known. After all such networks and appointments keep their power by being unofficial and would undermine their effectiveness if the Commission were too well known to have possibly at times lost its independence. Thus to expect the German State to stop trying to place their nationals in Head of Unit positions-as they allegedly did or other nationalities to place their officials as Directors, Director General or Desk Officers is wishful thinking and it is equally wishful to imagine that these networks will ever be fully transparent. They are too effective at soothing the nerves of the MSs that they are being heard in the right places. Inefficiency is a relative commodity; there are more important effectiveness issues at stake.

#### 6.5.2 STAFFING INEFFICIENCIES

Discussions with officials at a unit level revealed that some of the units in the DG appeared to be overstaffed and not the opposite. Some tasks were allegedly more or less created by staff to justify their continued presence in a unit and the Heads of Unit tacitly encouraged this. Some stressed that the DG was chronically over staffed, but then add the proviso that it was understaffed with able and motivated officials.<sup>151</sup> Thus there would appear to have been some staff that worked extremely hard and more or less carried the free riders with them. Some stated that thirty percent of the staff did little, thirty percent were demoralised and therefore worked less hard than they could whilst thirty percent were highly motivated and work extremely hard.<sup>152</sup> Staff transfer from under worked to over worked units appeared to be negligible and there was no real management plan to implement such transfers. Some Heads of Unit seemed to deliberately keep their staff even though there was not enough work for them to do.<sup>153</sup> The reasons given for this were status and maintaining slack for future needs, although the unit concerned was being gradually run down which made any future bottleneck unlikely. But it was fair to say that the acquisition of staff in the Commission was renowned for being difficult, but equally MSs always stressed that the capacity was already there if the Commission were more able to move its staff around and they seem somewhat justified in their view. The alleged unwillingness of managers to allow their staff to be transferred was no doubt continued within the directorates and the DGs. It was stated as well that officials had been considered to have 'feudal' rights over their position,<sup>154</sup> and this made it extremely difficult to forcibly move them at all, outside an all out reorganisation. The end result was rather similar to that of a muddled chest of drawers, which it is easier to ignore and buy another one rather

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<sup>150</sup> Interviews with Commission Officials: DG AGRI

<sup>151</sup> *ibid*

<sup>152</sup> *ibid*

<sup>153</sup> *ibid*

<sup>154</sup> Interviews with Commission Officials: DG REGIO

than sort out the old one. Some Heads of Unit were alleged to claim the need for more officials when this was not necessarily required<sup>155</sup> and the personnel department possibly did the same.

One apparent mystery described by some of the officials was that the structure of the DG had remained curiously unchanged despite the major changes in CAP which should have brought about matching changes in the organisation.<sup>156</sup> Staffing levels appeared to be utterly resilient to changes in work load and regime make up. The decline of the DG and the CAP should have led to a gradual decline in staff numbers but this was not the case, rather staff numbers were increasing. Part of the explanation was laid out earlier, the need to implement new and old policies at the same time and the growing complexity wrought by the reforms, but some of the officials were sceptical that there would ever be a decline in staff numbers.<sup>157</sup> The DG had proven itself able to defy the trend in the reforms that should have left them with less staff and a simpler policy to implement. The DG seemed to blame the MSs and their pressure for the growing complexity of the policy and the reforms, but this was only half the story. It seemed to be relatively clear that the DG and its units were quite able to defend their interests and it would seem logical that it would be equally able to influence the reforms to defend their clientele and to defend their units and officials. In the Commission, policy change could seemingly only come by moving people around and not simply by requiring it from above.

Once officials are inside the Commission they enjoy considerable protection and room for movement within the structure. They are allegedly able to affect their promotion prospects to a certain degree by their willingness to join various networks and to use the hierarchy to their advantage. An incident was given by one official of the ability of some officials to get around impending reforms and changes in the Commission. An official allegedly knew that the April 26, 2004 Staff Regulation change would result in his being downgraded and not up graded. Quite informally he was able to be promoted to a higher grade before the changes came into effect which effectively protected him from the reform of the grading system.<sup>158</sup> This is of course not supposed to happen. It was stated that by knocking on the right doors rules could be circumvented.<sup>159</sup> It was problematic for those outside the system and the networks. The NMS officials joining did not of course not benefit from the ability to circumvent the reforms. As under the new reforms all officials are to be paid less, regardless of whether or not NMS officials applied to the old grades and salary levels. Therefore NMS officials were going to be treated, in effect, as lower officials. Those already in the services were able to get promoted before, or some at least; those outside the networks would join with less money than they had expected and than their equivalents at the time of their application. It was expected that there would be cases going before the European Court of Justice (ECJ) with regard to this, in practice seemingly cunning form of discrimination.<sup>160</sup>

## 6.6 REFORMS RE-INTERPRETED

The promotion scheme was allegedly turned on its head. It was intended that the CDR and promotion structures would allow the Heads of Unit more room to be managers of their staff. To achieve this goal a points system was introduced which allowed the Heads of Unit to allo-

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<sup>155</sup> Interviews with Commission Officials: DG AGRI

<sup>156</sup> *ibid*

<sup>157</sup> *ibid*

<sup>158</sup> *ibid*

<sup>159</sup> *ibid*

<sup>160</sup> *ibid*



cate points which would be used to grant disserving officials promotion; these points would be allocated according to merit. However a parallel system apparently existed which allowed the Director General to allocate so called priority points for promotion. This unfortunately coincided with a desired Commission average of fourteen from twenty points which was set for the DG to achieve, setting an average in merit points regardless of whether the merit was there, which was odd, and a claw back system allowed points to taken from the DG for the future. The Director General had the final say in who got the priority points which meant these points were the crucial ones where promotion was concerned. The outcome was obvious, the Heads of Unit generated their points which were not crucial, it was allegedly the top management which mattered.

The attempt at reforming the administration of the Commission and the DG also seemingly floundered, in part, due to the apparently deliberate attempts by the more directly affected hierarchy to seemingly sabotage them<sup>161</sup> and also in part due to the probable inexperience of the management executing the reforms. The hierarchy were alleged to have resisted the Kinnock reforms and their change in management and administrative culture that they implied.<sup>162</sup> Under the previous system they had enjoyed considerable power over their personnel and the DG, they perceived the reforms as threatening this. No doubt there was also the sense in which the old style hierarchy was familiar and different in tone from the more Anglo-Saxon approach of the Kinnock reforms. Either way, the hierarchy was said to have either resisted or subverted the reforms to try and ensure their power. The point system with the promotions was probably one of the reforms that was altered away from its original goal. Since the Kinnock reforms were supposedly aimed at improving efficiency, such activities could only be construed as opposing efficiency as defined by the Commissioner level. That said the method of introducing the reforms and the reforms themselves was alleged to have been clumsy, revealing it would seem an ironic lack of management skill by the highest management.<sup>163</sup> An example of the problems related to the reforms in general was the ABM, activity based management, was alleged to have been done badly and late, with complicated task sheets which were impossible to fill out, there was a desire to use neat categories like letters written and a lack of interest in the real work of the officials.<sup>164</sup> Many of the typical tasks of the policy-making officials were simply not on the lists. The Commissioner level management appeared to have failed to consider the true nature of the Commission and its services in drawing up the reforms. Such a lack of knowledge of the managed officials' work appeared to show a failure of management. This was confirmed by officials alleging that the reforming management failed to apply their own rules to themselves, albeit in relation to parachutage.<sup>165</sup>

One of the key reforms was that of mobility. Staff were encouraged, sometimes obliged to move to a new position every five to seven years. However a closer scrutiny of what actually occurred showed the apparent failure of the reform. Although staff were moved to new units, some seemed to have continued to follow the same dossier although in a different unit.<sup>166</sup> Which leads to another point that units were alleged not to have been given clear tasks and there was no way of knowing which unit was doing what.<sup>167</sup> In some DGs, the allocation of tasks to units seemed to bear little relation to the formal title of the Unit.<sup>168</sup> Thus a horizontal unit could find itself being allocated a quite different sort of task. With regard to the mobility

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<sup>161</sup> Interview swith Commission Officials: DG AGRI

<sup>162</sup> *ibid*

<sup>163</sup> *ibid*

<sup>164</sup> *ibid*

<sup>165</sup> Interviews with Commission Officials: DG REGIO

<sup>166</sup> Interviews with Commission Officials: DG AGRI

<sup>167</sup> *ibid*

<sup>168</sup> *ibid*

rule this could not have been the intention of the reform. It was to be expected that the positions handling financial payments would see a stricter form of mobility, but for many others the reform was allegedly more form than reality. Continuity in dossier management was assured, but mobility is not.

Officials were alleged to have had far more freedom to do what they wanted rather than what they should, formally, have been doing. Compared with the officials in national administrations the DG officials were said to have been loosely supervised and much was left up to the motivation of the individual concerned. Basic management tools for controlling staff were said to have been like water on the back of a duck.<sup>169</sup> With the ABM, activity based management reform the management apparently asked the staff to inform them about what they were actually doing, in order for the ABM to be put into place. According to some this showed the absence of management control which was allegedly present in the DG and the Commission as a whole.<sup>170</sup> The management in this situation seemingly did not know what their staff were doing. The forms which the staff were then required to fill out were said to be over long and complex and time consuming to fill out. The DG then dropped the ABM returning to the situation to that which had existed before. Certain officials expressed their amazement at this turn of events, stating that in MS administrations ABM was a basic management tool, unpopular at first but accepted and used later. The Commission allegedly quietly let it drop, supposedly the DG introduced a watered down version, but the officials said that they had never heard of it.<sup>171</sup>

The Kinnock reforms and bureaucratization were received with plenty of scepticism if not hostility as was stated earlier. According to one source the reforms did too much too soon and had to fail. The reformers were stated to have 'wanted to rush' and that they did not '... care about them or want the reforms to succeed.' The reforms '... were only there for their face value and purely cynical only for the audience, political reasons ...'<sup>172</sup> The point was stated by another official who said the reforms had all been only paying lip service to the real notion and that in the DG they were only finally put into force.<sup>173</sup>

#### 6.6.1 FRAUD AND LACK OF MANAGEMENT CONTROL

Having discussed what happened inside the DG and how officials were managed it is interesting to note how external actors perceived it. The Court of Auditors produced two reports on the work of the DG, particularly the setting of financial rates with regard to Community support. Inadequate documentation of the facts behind the rate setting (for various agricultural products) pursued by the Commission was criticized, as this could well lead to fraud, with serious results for 'independent control by third parties and for management.'<sup>174</sup> There was said to still be only a weak connection between setting of the refund rate and the information available.<sup>175</sup> There was said to be 'no coherent' link between the market prices and the rates set by the Commission.<sup>176</sup> In conclusion the 2003 report stated that nothing very much had changed since its last report in 1990. Interestingly enough the Commission accepted this and promised to act on the report, this time round.<sup>177</sup> This suggests that some of the allegations were proba-

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<sup>169</sup> Interviews with Commission Officials: DG AGRI

<sup>170</sup> *ibid*

<sup>171</sup> *ibid*

<sup>172</sup> *ibid*

<sup>173</sup> *ibid*

<sup>174</sup> See note 91 Court of Auditors. Special report No 9/2003. 2003/C211/01

§ 9

<sup>175</sup> *ibid* § 20

<sup>176</sup> *ibid* § 27

<sup>177</sup> *ibid* conclusion



bly accurate and requiring remedy. The list of recommendations which the Commission agreed to act upon was long and included: making more transparency available via clear documentation; checking some of the CMOs such as that of Sugar, to see if they needed changes; ensuring that rates were justified and supported by paperwork, proving that management checks had been carried out.<sup>178</sup> The Court of Auditor's recommendations were said to be one of the reasons for the major re-organization in 2004, but some officials seemed to consider that it was the scandal of 2003 which involved the cereals CMO unit and misbehavior by a member of staff which forced the DG into a position where it was willing to compromise.<sup>179</sup>

There was a major re-organization planned for October 2004, the main features of which were apparently that the units paying for the CAP were to be separated from those monitoring the market and setting the rates and placed in different directorates. The need to fully implement the Kinnock reforms and in particular the reforms associated with accountancy methods to protect against fraud led to the creation of a new directorate solely charged with this task. A rural development directorate with three new Heads of Unit and a new Director was to be created. Most new staff were to be allocated to rural development and the audit directorate. Before, in the DG, units had had financial control members of staff attached, but with their increasing importance the directorate was created, and the increase in numbers justified. According to some the audit directorate was the one with the most clout, too much power since it was not a front line, sectoral, directorate. The auditors were said to have 'an arm lock' on the rest of the directorates, slowing the administration and payments down.<sup>180</sup> NMS staff were to be 'parachuted' into the new management positions and into any others which the policy of early retirement opened up.

The reasons given for the re-organization were varied and no doubt all had elements of truth in them. One reason stressed that the re-organization was to rationalize the DG and to integrate the NMSs fully into the organization.<sup>181</sup> Some officials stressed that the re-organization was intended to incorporate the changes required after the Mid-Term Review and the reforms of the CAP, i.e. a purely logical step.<sup>182</sup> However, granted that the DG had a track record of stubborn resistance to internal changes in line with policy changes this seemed curious. They added after a while, that the Court of Auditor's report recommended the changes be made.<sup>183</sup> This was true but as was stated earlier the same recommendations were made in 1990 and ignored. More staff stressed that the allegations of fraud and corruption in one of the CMO units in 2003 forced the DG to change.<sup>184</sup> This was exactly what the Court of Auditors had warned could happen in 1990 and been ignored. The DG had allegedly chosen to ignore the requirement for staff to be mobile, only highly sensitive posts had been made mobile, the rest remained unchanged, despite pressure from officials.<sup>185</sup> A further change which the reorganization put into place is the long overdue separation of market monitoring from payments. A system 'integrated payments system' which achieved just this separation had been drawn up by a unit in the DG long before the 2003 scandal broke, but far from the DG accepting the logic of the system and allowing the unit to put it into practice, it was sidelined until the scandal broke and the unit disbanded.<sup>186</sup> In 2004 it was apparently to be recreated again.<sup>187</sup>

<sup>178</sup> See note 91 Court of Auditors. Special report No 9/2003. 2003/C211/01 § 27 conclusion

<sup>179</sup> Interviews with Commission Officials: DG AGRI

<sup>180</sup> Interviews with Commission Officials: DG REGIO

<sup>181</sup> Interviews with Commission Officials: DG AGRI

<sup>182</sup> *ibid*

<sup>183</sup> *ibid*

<sup>184</sup> *ibid*

<sup>185</sup> *ibid*

<sup>186</sup> *ibid*

<sup>187</sup> *ibid*

## 6.7 SECTORISATION AND POLICY NETWORKS

The CAP is stated to be well known for its complexity, 'the "Byzantine complexity" of the CAP is legendary.'<sup>188</sup> Which is a situation which has given large amounts of discretion to the specialists, this also reinforces the general notion that complexity, leads to opacity which keeps all but the experts on the outside.<sup>189</sup> There are said to be 'Intimate, even incestuous, relationships between national agricultural ministers and farmers' groups . . . ', which, ' . . . have manifested themselves in quite insular and integrated national policy networks.'<sup>190</sup> Even the reforms that have been agreed upon seem to have made the CAP even less understandable to all but the experts. The complexity is said to have assisted in the formation of; 'tightly integrated farm policy communities' and making sure that they 'keep a grip on decision making.'<sup>191</sup> The 'highly fragmented decision-making mechanisms at the sub systematic level' are stated to be a major hindrance to reform and 'sweeping policy changes.'<sup>192</sup> The literature and the reactions of CAP officials mentioned in the literature seem to confirm the presence of 'policy networks' and it seems pretty likely that the Commission is the 'ring leader' of CAP networks, and its officials remain that too.<sup>193</sup> It is interesting to note that 'the CAP's complexity is almost impossible to overstate, and in many respects is an anathema to coherence or centralisation.' This is not so dissimilar to the situation in the rest of the EU. CAP status quo and complexity has seemingly kept officials enjoying considerable power, reform and reorganisation at bay, and farmers reasonably safe and content, agricultural ministers content and the sector both inefficient and absorbing too many funds.<sup>194</sup> EU complexity has likewise probably been extremely useful to a similar range of actors as well.

The DG was excellent ground for Policy networks and not surprisingly there were indications that this was the case. As was mentioned earlier, on a purely organizational level, staff stated the problem of networking and the use of personal contacts, when discussing project and task distribution. People were allegedly given positions on the basis of who they know and not what they knew. It seemed to be possible to affect officials' promotion prospects to a certain degree if they were willing to join various networks and to use the hierarchy to their advantage. An incident was mentioned of the ability of an official to get around impending personnel reforms and changes in the Commission by using their personal networks of contacts. Some 50-70% of the officials in the DG were alleged to be loyal to their sector and idealists in terms of promoting agriculture.<sup>195</sup> The most powerful lobbying groups in the EU are stated to be those of 'farmers and recipients of regional aid' and that 'the prospect of major cuts to pay for increased transfers to the East would provoke opposition . . . '<sup>196</sup> Certain MSs are important members of influential Policy Networks:

'Thus the agriculture DG used the farm lobby to consolidate its position in the 1960s and 1970s. As the political pressure for reform grew and it found itself under challenge from other coalitions, it remained strong, partially because it could draw on other resources such as longevity, but also because it could call upon a powerful ally, the government of France. Both

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<sup>188</sup>Peterson, J and Bomberg, E. (1999), *Decision making in the European Union*, New York, St, Martin's Press p.138

<sup>189</sup>ibid p.138

<sup>190</sup> ibid p.139

<sup>191</sup> ibid

<sup>192</sup> ibid p.139

<sup>193</sup> ibid p.139; 140

<sup>194</sup> See note 70 p.410

<sup>195</sup> Interview with Commission Official: DG AGRI

<sup>196</sup> ERT (European Round Table of Industrialists) *The European Challenge message to the spring European Council* March 2003 p.31



political expediency and nationality (the Agriculture DG from 1958 to 1999 always had a French director general and despite the appointment of a Spanish head in 1999, remains a very 'French' DG) have created a strong and valuable link.<sup>197</sup>

'There had been expectations that the Commission would propose a bolder move to an integrated rural policy . . . but adverse reactions from farmers lobbies and some MSs and power struggles within the Commission, appear to have caused a retreat from earlier intentions . . . The efforts of various Commissioners and their departments to hold on to fiefdoms have impeded rationalization.'<sup>198</sup>

The quotations are but one hint at a deeper problem which afflicted the DG until very recently, and it could be argued until October 2004, namely, that of weak CAP reforms and general DG AGRI policies owing to the existence of powerful groups within the DG assisted presumably by strong links to lobbyists and MSs outside the Commission i.e. Policy Networks.

A cursory glance over the history of CAP reform reveals that the reforms have often failed to live up to the expectations of many of those outside the directly involved agricultural industry. It is often argued that this is due to the MSs and their ministers on the Agricultural Council being unwilling to allow changes. This no doubt to some extent true, Commission proposals seem to have been more reforming than those that the MSs finally agreed to. But it has also been stated that apparently some MSs supported by some elements within the Commission formed the cause of the problem which finally had to be dealt with by the Commissioner himself.<sup>199</sup> It is the apparent collusion between certain groups in the DG and MSs and of course lobbyists which makes it necessary to consider more fully what apparently far reaching Commission reform proposals actually represent.

Major proposals agreed by the Commission, mean just that, these are documents maybe drawn up by a small group within the DG concerned often under the direct influence of the Commissioner and often discussed and amended by other DGs and the College before becoming 'Commission' proposals. As was stated earlier, the alleged use of small groups for drawing up the Agenda 2000 show that the DG and some elements of its hierarchy and units were not necessarily involved in the adoption of the proposal. The subsequent watering down of the proposal appeared to have not been desired by the Commissioner and the group which pioneered the original reform proposal. But allegedly the members of the CMO units, the so called guardians of their sectors, were known to have opposed the reform of their regime.<sup>200</sup> Granted the close relationship between many of the MS nationals in the hierarchy and their decisions to favour their MSs at times, then the apparent MS opposition to reform is more than likely to be matched and represented in the DG. In fact the thirty odd years that some members of the CMO units seem to have enjoyed in their positions, with a monopoly of information and terms in office exceeding their MS counterparts allegedly combined with long standing networks,<sup>201</sup> reveals an interesting point. In times of crisis the expertise of the specialists was stated to have been able to marshal the MSs,<sup>202</sup> so why not in the face of reforms which certainly meant crisis for many of those involved. Officials were seen to be at the centre of their policy networks and for details and policy know-how the MS officials looked to them for leadership and answers. Quite apart from the Agricultural Council there were a range

<sup>197</sup> See note 51 Stevens: Stevens (2001) p.205

<sup>198</sup> See note 2 Tracy (1997) p.48

<sup>199</sup> Interviews with Commission Officials: DG AGRI

<sup>200</sup> *ibid*

<sup>201</sup> *ibid*

<sup>202</sup> *ibid*

of Committees which the Commission officials would often participate in if not lead which involved MS officials and experts. These committees were so closely related to the DG that an example was given of MS officials knowing about Commission lower level future promotions long before the official concerned.<sup>203</sup> In such an environment the separation of MS from Commission in terms of the reform seems somewhat artificial and needing closer definition. It appears quite possible that old timers from the CMO units could use their networks to oppose the proposals made by the Commissioner and make it seem as if the MSs decided it so. This might also help explain the seeming impossibility of matching the DG organization with the required radical reforms, and such reform would seem to require as a starting point the reorganization of the DG.<sup>204</sup> Policy Network activities seems to help account for the seemingly clear perspective of the spokesman for the Commissioner who expressed a desire for radical reform,<sup>205</sup> and the greening of the CAP, whilst in fact the details achieved considerably less.<sup>206</sup>

It could be expected therefore that the CAP reforms would be watered down in favour of the CMO units' clients, in this case ensuring that some price protection remained and also that some productivity payments relationship would be in place. This would ensure that the CMO units which dealt with using market prices to encourage productivity, would be able to retain some of their work and influence whilst also protecting their productivity payment dependent clients. Even at the proposal stage before the Agricultural Council dilution seemingly took place, the CMO units could be seen to have begun to water down the 'vision' of the Commission. The results support the above, as the discussions surrounding the Agenda 2000 show:

' . . . we are profoundly disappointed by the timidity of the proposals for reform of the sheep meat and sugar regimes. Only if direct compensatory payments to producers decline over time will it be possible to respond to the external challenges to the CAP posed by the WTO and enlargement of the EU . . . Though the Commission does have a vision for transforming the CAP into a more integrated rural policy, they appear to have judged that the Agricultural Council would not share or accept that vision at this stage of the reform process. A more positive lead from the Commission would have forced the Agricultural Council to confront these issues directly, and it is regrettable that the Commission has not felt able or willing to provide such a lead in Agenda 2000.'<sup>207</sup>

In fact despite the Beef support price being reduced, there were signs that beef stocks were on the up again. The use of a term 'headage' to signify productivity payments made per head of cattle and sheep was found replacing the direct support price. Unsurprisingly this new way of paying for productivity, showed plenty of signs of increasing production and generating the surpluses<sup>208</sup> at excess costs that the reforms were supposed to have stopped, 'the growth in production was again outstripping growth in consumption from 1994 onwards . . . and the potential for the re-emergence of a long-term structural surplus in this sector remained even after the 1992 reforms,'<sup>209</sup> and ' . . . the EU Commission could have underestimated the potential build-up of intervention beef stocks in their analysis even before the Agenda 2000 pro-

<sup>203</sup> Interviews with Commission Officials: DG AGRI

<sup>204</sup> Mr Wynne, Director of Conservation RSPB, Minutes of Evidence, See note 3 Agricultural Committee of the House of Commons, session 1997-8 p.118. 'I think the point is that if the kind of radical reforms we all want to see go through, DG VI would not be DG VI in any case.'

<sup>205</sup> See note 3 Agricultural Committee of the House of Commons, session 1997-8 Memorandum submitted by the soil association. Minutes of Evidence, p.290

<sup>206</sup> Memorandum submitted by Scottish National Heritage. Minutes of Evidence, See note 3 Agricultural Committee of the House of Commons, session 1997-8 p.246. 'It is not convincing for the Commission to argue for the integration of environmental issues into the CAP, but to reject the clear opportunity to end headage payments.'

<sup>207</sup> See note 3 Agricultural Committee of the House of Commons, session 1997-8 p.31-32

<sup>208</sup> *ibid* Memorandum submitted by the farm and Food society. Minutes of Evidence, p.237

<sup>209</sup> *ibid* Memorandum submitted by Micheal Winter, Professor of Rural Economy. Minutes of Evidence, See note 2 p.168



posals are introduced. We believe they may reach 1.4 million by 2000 rather than the 39,000 tonnes forecast by the Commission.<sup>210</sup> And 'far from reducing CAP budgetary expenditure, it is clear that the Commission, in Agenda 2000, is resigned to increasing it. This is totally unacceptable. It could have been avoided by reducing direct payments over time.'<sup>211</sup>

The Australian government commented on the reforms and seeming removal of market support required to comply with international agreements and agreed upon in principle by the EU, as follows, 'Australia is disappointed that they do not go far enough, with levels of market support remaining excessively high and the reforms themselves limited to a narrow group of commodities,'<sup>212</sup> and again 'The proposals are only a further step in the direction towards real reform. They do not de-link support from production.'<sup>213</sup> They go on to state that the EU is not preparing itself for the WTO agreements nor really reforming as needed. The Commissioner's goal was to be ready for the WTO and to effect real reforms.<sup>214</sup> The use of: headage payments; little or no changes in the Dairy CMO; and the Sugar CMO seemed to show that the units and related hierarchy concerned with these CMOs, which had been supported directly by intervention price support before, had successfully protected their own positions and their clients from the intended effect of the reform. Whatever the Commissioner seemed to want to promote failed to be executed properly in practice.

Allegedly there was resistance in the CMO units to the reforms which would affect their sectors and of course their units.<sup>215</sup> The nature of this resistance appears from the above to have involved utilizing networks, MS pressure, and the use of information in the DG. Probably the failure of the DG to reorganize itself in the light of the Commissioner's reforms weakened the reforms themselves. Even the Kinnock reforms which were intended to promote mobility within the Commission were apparently successfully evaded by the CMO units when they were first suggested.<sup>216</sup> Curiously enough, allegedly the argument used was that the units' closeness to their clients and industry was a major asset which would be put at risk. Years of patiently building up networks would be endangered; the hierarchy apparently obligingly dropped the mobility issue for them.<sup>217</sup> It was just this apparent level of closeness to clients, industry and MSs that the mobility policy aimed to remove. The appearance of fraud in 2003 in one of the CMO units proved this danger to be real. It would appear that the units also argued along the lines of the difficulty of reforming or reorganizing them without endangering the complex knowledge banks in officials' heads which were the key to the complex regimes.<sup>218</sup> In reality allegedly a determined, total reorganization of the units was possible, although only one of the units chose to follow this example and only due to external influences.<sup>219</sup>

One of the most unreformed CMO units was seemingly that of sugar which seemed to have successfully evaded reorganization to itself and any reform to its regime. The reform and reorganization seem to go hand in hand, as this case shows. The Sugar unit and its personnel were cited as an example of longevity in post and policy being neatly correlated to reform resistance.<sup>220</sup> When asked to consider the reform of their policy the officials allegedly refused to

<sup>210</sup> *ibid* Memorandum submitted by the Meat and Livestock Commission Minutes of Evidence, See note 2 p.172

<sup>211</sup> See note 3 Agricultural Committee of the House of Commons, session 1997-8 p.33

<sup>212</sup> *ibid* Memorandum submitted by the Australian Government. Minutes of Evidence, Annex 48. p.292

<sup>213</sup> *ibid* p.294

<sup>214</sup> *ibid* p.294

<sup>215</sup> Interviews with Commission Officials: DG AGRI

<sup>216</sup> *ibid*

<sup>217</sup> *ibid*

<sup>218</sup> *ibid*

<sup>219</sup> *ibid*

<sup>220</sup> *ibid*

give it their support and ensured that the study that was performed to assess the need failed.<sup>221</sup> Finally there was allegedly no other way forwards and the Commissioner intervened to force the reform, he appeared to have lost trust in the CMO units. The unit was seemingly considered to be far too close to the industry and that this was a likely cause for their unwillingness to reform.<sup>222</sup>

Certainly the documentary evidence supports the notion that sugar was oddly exempted from all the reform procedures, ' . . . we consider it wholly unacceptable for the sugar regime to be left unaltered until 2006, and would welcome an early declaration of intent from the Commission that the reform of the regime will be addressed as soon as possible.'<sup>223</sup> The Commission's own documents mentioned the odd situation of the sugar regime:

'In essence, the sugar CMO was left out of the CAP reform process which started in 1992 and has continued since then, and was only slightly affected by the Uruguay round of trade negotiations. Its relative longevity bears witness to a certain degree of success, although at a high cost with regard to the achievement of the initial objectives assigned to it. Today it is experiencing pressure which is profoundly changing the prospects for the sector and is also being subjected to criticism, sometimes years-old, from numerous and varied sources . . . However, this exclusion from reform encouraged support in the sector to develop in a way that created competitive distortions among farmers . . . Without reform the sugar sector would remain sidelined from the movement towards sustainable agriculture guided by the market.'<sup>224</sup>

The same document mentioned the frequent impulses for reform which came from several sources, 'While being subject to great external pressure, the CMO is also under pressure from within. Since 1975 the Court of Justice has been pronouncing strong reservations on the CMO and its impact on competition. In 2000 independent experts carried out an overall evaluation of its operation. In the same year the European Court of Auditors made it the subject of a special report'.<sup>225</sup> Later it stressed that: the Commission itself; the national authorities; the OECD; the Court of Auditors; the sugar using industries and the consumer bodies all complained about the CMO which was so beneficial to the sugar producers.<sup>226</sup> It is almost unbelievable that the Sugar unit and its networks were able to withstand such pressure, but seemingly they did. This reinforces the point made earlier that the 'Commission' as a whole may well want reform but this 'Commission' in all likelihood does not involve the actual units concerned and the hierarchy which seemingly supports them. It is allegedly well within the power of the unit concerned and the Policy Network in which it is both embedded, and at the heart of, to stand up to and oppose the Commission and Commissioner as a whole, unless great pressure is brought to bear.

The Report made by the Court of Auditors on the Sugar Regime in 2000 revealed some interesting points. Some elements including a small group task force, from the economic analysis section of the DG, within the DG considered many of the options available in 1992 and concluded that in the possession of a 'thorough assessment' they could propose some major price cuts of up to 30%.<sup>227</sup><sup>228</sup> But finally the Commission only proposed that the CMO remain unchanged. In 1994 despite the DG being in possession of a range of important facts these were

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<sup>221</sup> Interviews with Commission Officials: DG AGRI

<sup>222</sup> *ibid*

<sup>223</sup> See note 3 Agricultural Committee of the House of Commons, session 1997-8 p.35

<sup>224</sup> Reforming the European Union's Sugar Policy COM (2003)554 final p.8

<sup>225</sup> *ibid* p.11

<sup>226</sup> *ibid* p.13

<sup>227</sup> Court of Auditor's special report 20/2000, 2001/C 50/01. § 40

<sup>228</sup> *ibid* § 24



seemingly not passed on to the decision makers, the Council and Parliament. These institutions were effectively kept in the dark by the DG, it would appear possible that the unit concerned, used its information monopoly to manipulate the decision makers and to so win a continuation of the regime, almost unchanged, 'The preparatory work by the Commission services . . . was again not presented to the decision makers. There was no information given on the desirability of reform in the light of the CAP reforms and the single market.' And again one paragraph later<sup>229</sup> 'It is clear from the above that the Commission did not present all the appropriate information to justify the continuation of the quota arrangements for 1995 to 2001 . . . At the same time it was noted that extensive, although, not complete information was available to the Commission services. Furthermore, the Commission did not present the likely impact of their proposals compared with other options . . .'<sup>230</sup> The report concluded by casting doubt on the Commission's management, 'the soundness of the Commission's management and in particular the quality of its proposals, decisions and actions has had an impact on the outcomes and for this the Commission is responsible and accountable.'<sup>231</sup> But the CMO apparently persisted for some time in keeping the same level of quotas and prices despite evident contradictions between the Agenda 2000, the Sugar CMO and the resultant overproduction.<sup>232</sup>

The report seemingly confirms the supposition that the Commission, here the unit, as explained before, was able to ignore pressure to reform from internal sources and from the Commission as a whole and it is likely the Commissioner and the other institutions were equally powerless. It seems to have achieved this by using information controls, omitting to mention certain aspects and withholding important facts. The CMO units were seemingly able to monitor and control the success or failure of the Commission economic evaluation teams and the Sugar regime did this.<sup>233</sup> The hierarchy appeared to have supported the unit or at least neglected to control it and to manage the DG more thoroughly. Whatever problems emerged at the lower levels of the DG, the hierarchy were alleged to have neglected their task of control and management, either accidentally or deliberately.<sup>234</sup> Thus the unit and CMO were able to determine their own future and that of their sector. Something similar if not so spectacular probably happened in the other CMO units. The cost to the consumer, the credibility of the Community and the reforms was large, yes, the Council and thus the MSs agreed to the regime and could have been blamed for the situation but it is clear how the Council and thus MSs were also controlled. One solution to the Sugar regime was listed as the liberalization of the market. Indeed this would appear to have had the winning hand with the list of benefits to be gained by adopting, it more impressive than the other three options discussed.<sup>235</sup> The downside was that many of the then beneficiaries of the regime were seemingly unhappy about it. It is likely that the Unit knew that the price could be reduced and the regime simplified, by more liberalization as early as 1992 if not before and opposed it, to prevent any loss of power.

In the 1992 reform the CMO units had participated in the CAP reforms, in the Mid Term Review they were allegedly not consulted, maybe this is why the Mid Term Review was referred to by some as the most radical of the reforms.<sup>236</sup> The Commissioner was stated as having used his think tank alone to ensure that this time the reforms took place. He was alleged to have deliberately 'bypassed' the CMO units, MSs and the hierarchy.<sup>237</sup> A problem and reason for

<sup>229</sup> See note 227 *Court of Auditor's special report 20/2000, 2001/C 50/01* § 31

<sup>230</sup> *ibid* § 32

<sup>231</sup> *ibid* § 100

<sup>232</sup> *ibid* § 101

<sup>233</sup> Interviews with Commission Officials: DG AGRI

<sup>234</sup> *ibid*

<sup>235</sup> See note 224 *Reforming the European Union's Sugar Policy COM (2003)554 final*

<sup>236</sup> Interviews with Commission Officials: DG AGRI

<sup>237</sup> *ibid*

the CMO units and their regimes remaining unchanged and not 'seeing the writing on the wall' was that the organization of the DG had failed to change to match the new policy reforms.<sup>238</sup> Thus an old style, pre reform organization structure will impede if not contradict the reforms themselves. To force such a reorganization requires considerable political will, particularly in a DG the size and age of DG AGRI, but the cost of not doing it is worse. Of course the CMO units would have probably opposed the change, but in the end the change had to happen anyway.

The literature supports the findings above of Policy Networks resisting reforms to the CAP. Indeed the DG is criticized about the power of the networks, 'The history of moderate reforms as responses to fundamental and serious policy problems suggests that we should examine the reasons why there have been no fundamental changes in the CAP, even though there would be welfare economic gains from doing so.'<sup>239</sup> The article reaches the conclusion that powerful Policy Networks were able to keep the CAP from being reformed, even though it should have been as the next quotation suggests. 'The existence of a cohesive policy network in the sector in which reform is put on the agenda limits the opportunities for fundamental reform. Members of such a network can form a strong coalition resisting change. Political systems in which the structure disperses political power to several decision making centres provide many veto points which can be used, often successfully, to mobilize opposition to reform.'<sup>240</sup> The last point is important as the current fragmented state of the EU is seen to be an important reason for a lack of reform. The DG or units in it, seemingly headed and organized the resistance and seemingly encouraged the fragmentation and not the opposite. The DG was considered to be full of veto points and very influenced by the MSs. The author stressed, 'This study has shown that even though heavy pressure was put on EU agricultural policy makers to reform the CAP fundamentally in 1991 and 1992, organizational structures led them towards moderate reform.'<sup>241</sup> Essentially the article is in agreement with the chapter only the chapter provides the DG internal explanation for the reform resistance that occurred and emphasizes that the DG or elements of it were of central importance in the Policy Networks. It was seemingly only once the Commissioner out-manoeuvred these that the Mid Term Review was possible.

## 6.8 ENLARGEMENT

'Eastern enlargement puts the CAP, as we know it, under threat as never before . . . '<sup>242</sup>

The close relationship at times between the enlargement process and the CAP was made clear in the above, the rest of the quotation follows; 'Eastern enlargement puts the CAP, as we know it, under threat as never before. Fischler insisted that his 1998 reform package provided a "much needed example to Eastern candidates for EU membership. The European model of agriculture no longer justifies artificially high prices."<sup>243</sup> Whatever happened the CAP would end up being examined and reformed as a result of the enlargement and this was seemingly enough to make some officials in the DG react in a far from positive manner.

When addressing the enlargement phase, pre-accession aid is interesting. SAPARD was the EU instrument intended to help prepare the NMSs for the enlargement by their setting up ma-

<sup>238</sup> Interviews with Commission Officials: DG AGRI

<sup>239</sup> See note 70 Daugberg (1999) p.410

<sup>240</sup> *ibid* p.423

<sup>241</sup> *ibid* p.424

<sup>242</sup> See note 188 Peterson: Bomberg (1999) p.143

<sup>243</sup> *ibid* p.143



nagement and control systems. The DG was responsible for handling many of the aspects of SAPARD. The Court of Auditors annual report of 2001 reviews the SAPARD programme and made a range of criticisms. Some of these seem somewhat similar to the courts views about the CMOs; 'The Commission's analysis of the management and control systems is of crucial importance, because it aims to ensure that EU funds will be used properly . . . The main shortcomings noted were a lack of documentation on the nature, timing and extent of the audit procedures performed, some conclusions on the systems that were not supported by sufficient and reliable evidence and no systematic file review by the responsible hierarchy. The Court's audit concluded that, in these areas, generally accepted auditing standards were not applied satisfactorily . . .'<sup>244</sup> The amount of money finally paid out was incredibly small, 'Two years after the start of the programme, payments to final beneficiaries were made in only two countries to 0,1% of the total available funds.'<sup>245</sup> The Commission failed to carry out sufficient checks and this was said to be due to the 'numerous changes in Commission staff.'<sup>246</sup> One of the NMS officials interviewed commented on SAPARD, 'Mission impossible to get SAPARD going.'<sup>247</sup> This comment was linked to his comments on Commission bureaucracy and reforms. All in all the SAPARD scheme was not a particularly auspicious start to the enlargement process.

It was to be expected that a major policy issue like enlargement would have some profound effects on the organization directly implementing and affected by it. In order to survive in the new environment some form of evolution was expected to occur. Granted the Commission's constant statement of its being overworked and understaffed, then such a major new burden would have been expected to have placed it under almost unbearable stress. It would affect the DG's structures and reveal the fundamental soundness of them or at least their core components. Harsh decisions had to be made as resources were scarce. DG policies would have to be reformed and the units involved in them would see changes in their status, power, and resources. Some of the units concerned were all too aware and well informed about the likely trends and were in a position to act on their well informed expectations. CAP reforms had a direct link to the need to prepare for enlargement somewhat like the Kinnock reforms. The powerful groups within the Commission who had maybe been able to remain unreformed and quietly in control over the years, were forced to take actions which drew them into the open. Reforms would not surprisingly be resisted; political leadership would find itself steadily being forced to take more decisive steps to address administrative reluctance and resistance. The CMO units seemingly tried to resist the change and reforms with minimal adaptations rather than evolution, however they were finally modified after the Mid-Term Review. The hierarchy of the DG, or elements of it, appeared to have resisted the Kinnock reforms and seemingly assisted in resisting the CAP and enlargement required reforms. It seems hard to accept that the CMO units could have acted as they did without some assistance from the hierarchy or elements of it. Reorganizations can be ordered by Director Generals and these could have forced changes into effect in these units, but no reorganizations occurred and none were seemingly attempted. On the contrary the Commissioner appeared to have found himself ever more isolated with regard to the services which were ostentatiously there to serve him. The earlier balance of power, in favour of the services and certain units of it in particular was finally apparently visible. Once visible it could be addressed, despite the many allies internal and external that the units allegedly enjoyed.

<sup>244</sup> See note 227 Court of Auditor's special report 20/2000, 2001/C 50/01 §6.18

<sup>245</sup> *ibid* §6.30

<sup>246</sup> *ibid* § 6.22

<sup>247</sup> Interviews with NMS Officials

Time was one key factor, and the other is pressure. The Commissioner needed time to come to grips with the DG and this he seems finally to have done. The later years of his term in office saw the CAP reforms sharpening. No doubt he also built up his own networks internally and externally in the sector during this period. The arrival of the NMSs would have been of assistance as they were not content with the status quo and were also not yet part of the long established networks. Thus it seems likely that the Commissioner and the NMSs were in a sense allies. Interestingly enough the NMSs were seemingly interested in CAP reforms, much like the Commissioner, probably to prevent it becoming too much of an issue and blocking integration and because the CAP was tailor made to fit the old MSs and as newcomers they would like to alter the system to accommodate them better.

The attitude of the DG or elements of it towards the NMSs and the enlargement is interesting. At the early stage of enlargement the so called EA agreements were used (Europe Agreements) to guide the CEECs towards the Union and the negotiations for them began in 1990; there were problems at this stage between those who favoured long term political objectives or those 'under pressure from short-term problems'. Basically DG enlargement was opposed by DG AGRI and DG Industry, the latter under pressure from their respective sectors, much the same happened in MSs in their governmental departments. The result was that:

'... the ability of the sectoral logic to constrain a more politically motivated agreement was greatly facilitated by the fragmentation of the policy process and the lack of close oversight by the macro-policy-makers in the member governments. Defensive sectoral interests were able to insulate specific aspects of the EAs from political pressures for a more generous approach to the CEECs and to set the baseline of what would be on offer. As some of those involved on the CEEC side were able to observe, as fast as they identified issues on which they wanted to press for more open market access, they found that an EU-based lobby had beaten them to the EU negotiators.'<sup>248</sup>

The inefficiencies listed, and in particular that of the reform resistance of the CMO units, had a direct effect on the enlargement process. It was often said that the CAP reforms were vital to allow the Uruguay round to be successfully implemented and the future WTO round likewise, at the same time it was noted that the enlargement was to a large extent dependent on the successful outcome of the CAP reforms. In the September 2001 meeting of the European Prime Ministers, the enlargement was alleged to have been in danger of failing or being postponed on the basis of agriculture alone.<sup>249</sup> The argument was about the structure of the CAP and the payments connected to it, i.e. connected neatly to the CAP reforms. The role of the CMO units in resisting reform and keeping the cost of the CAP high was therefore a real threat to the enlargement process.

Allegedly, the CMO Units and some in the DG were seemingly hostile to the enlargement.<sup>250</sup> The NMSs were apparently seen to be a disrupting factor that was forcing changes onto the CMOs in question. The units and their supporters seemingly set out to resist the enlargement as well. They appear to have done this by ensuring that the *acquis* was hard for the NMSs to accept and absorb, it was, '... aimed against the NMSs in the period leading up to the Agenda 2000 ...'<sup>251</sup> The Commission drew up the *acquis* which the NMSs had to accept and implement, and that meant in practice that the CMO Units would have been able to have

<sup>248</sup> Sedelmeier, U and Wallace, H. *Eastern Enlargement in process* in (eds) Wallace, H and Wallace, W. *Policy Making in the European Union* fourth edition (2000) Oxford, Oxford University Press p.439

<sup>249</sup> Interviews with Commission Officials: DG AGRI

<sup>250</sup> *ibid*

<sup>251</sup> *ibid*



influenced their *acquis*. Some of the CMOs were alleged to be an ongoing problem.<sup>252</sup> One official put the current and old NMS problem succinctly enough; basically if you are not represented in a DG by your nationals then you will lose out directly in policy terms.<sup>253</sup> One last point on the DG and the NMSs, it will, according to one source, take 15 years for the NMSs to have the same representation in DG as the MSs, this is “normal.”<sup>254</sup> The NMSs are likely to have further problems down the line, parachute or not.

Some NMS officials expressed their problems at dealing with the CMOs<sup>255</sup> and this is backed up in the progress reports made by the Commission on them. The enlargement seemed to have been in some danger of failing or being postponed on the basis of agriculture alone. The summaries of the positions of the Czech Republic and Poland in their progress to accession with regards to agriculture, show some confirmation of the suspicion that the CMO units could affect enlargement in 2002. The NMS CMO organisations were stated to be an ongoing problem for the two states in question, mentioned first in 2000 directly for Poland and in 1999 in the Czech Republic, and still a problem at the end of the summary presumably in 2002.<sup>256</sup> After 2003 the DG was quite different, apparently after mobility was accepted by CMO units and there was a planned reorganisation. The successful passing of the Mid-Term Review was of considerable importance. Thus the enlargement went ahead despite the Commission’s negative 2002 judgement of the Czech Republic. The decision to allow the enlargement to take place probably reflected the weakening of the CMO units.

Where the period leading up to the Agenda 2000 proposals was concerned, there would appear to be evidence of some form of discrimination being practiced by the Commission vis-à-vis the then candidate countries. The proposals are apparently clear about the refusal to allow the new states to fully use the productivity support mechanism, or direct payments for beef on a headage basis, on their accession; ‘The Commission’s proposals in Agenda 2000 will lead to serious problems as the process of accession . . . takes place. The prospect of the establishment of a two tier CAP for the foreseeable future is fraught with political and moral problems. Equally the prospect of superimposing the bureaucratic and inefficient paraphernalia of the CAP on eastern European countries together with significantly higher food prices for less prosperous peoples is completely unacceptable.’<sup>258</sup> This was the situation that the Agenda 2000 envisaged and which arguably some of the CMO units had a hand in affecting. The final result in 2004 with the reduced power of the CMO units, was that the NMSs could receive some portion of direct payments from their accession onwards which they could then top up with national measures - which looks rather like a form of re-nationalisation for a period. The demands of the candidate states for direct payments and the involvement of the Prime ministers and no doubt the Commissioner, under pressure to prevent the enlargement coming un-

<sup>252</sup> Interviews with Commission Officials: DG AGRI

<sup>253</sup> *ibid*

<sup>254</sup> *ibid*

<sup>255</sup> *ibid*

<sup>256</sup> COM(97)2009 final, COM(98)708 final, COM(1999)503 final, COM(2000)703 final, COM(2001)700 final, COM(2002)700 final, SEC(2002)1401 final, -summary. Regarding Common Market Organisations, ‘Preparatory work is continuing on the Agricultural Intervention Fund established in April 2001, which does not yet fulfil all Community requirements. The field crops, specialist crops, livestock products and wine-growing sectors also require adjustment.’

<sup>257</sup> COM(97)2002 final, COM(98)701 final, COM(1999)509 final, COM(2000) 709 final, SEC(2001) 1752 – summary. Regarding Common Market Organisations At the end of 2000 and in March 2001, two laws were adopted on market research/surveys and on marketing standards. Partial adaptation to the CAP has been achieved in the following sectors: sugar, dairy, dried fodder, fresh fruit and vegetables, wine, tobacco and hops. Deficiencies remain, however, as regards the implementation, monitoring and control of marketing standards and the use of supply-management instruments... The milk quota-management system must be established before accession.

<sup>258</sup> See note 3 Agricultural Committee of the House of Commons, session 1997-8 p.32

stuck was required to get the agreement. Throughout the period the Commissioner had been allegedly becoming more active, using smaller more exclusive groups to decide policy, as stated earlier, and apparently losing trust in the DG services, which no doubt also helps explain the difference in the final decision. Food prices will go up in NMSs. In MSs 10-15% of public budget goes on food, in NMSs it is 30% which is considerably higher.<sup>259</sup> Since the CAP came into force in the NMSs, prices started going up in the states concerned and this was difficult for populations already coping with the problems of transition.<sup>260</sup> However, the Commission seems confident that the situation will improve and benefit all concerned. That said a sharp altercation in 2003<sup>261</sup> between the NMSs and the MSs at Luxembourg about changes to the accession treaties, resulted in the MSs ignoring NMSs concerns.<sup>262</sup> Interestingly enough much of the problem appeared to involve the dairy regime, which is one of the CMOs which was not over modified in the reform process. Finally the statement by the Polish minister appeared to contain a covert threat that after gaining full membership the NMSs will not only want more reforms, but will ensure that they are fully considered this time.<sup>263</sup>

In general, interviews with NMS officials revealed a range of opinions about the DG. On the whole the DG performed averagely or needed improvement.<sup>264</sup> The DG was described as 'a mammoth'<sup>265</sup> or a 'dinosaur'.<sup>266</sup> Inter DG communication and coordination seemed to have been considered to be below average or very bad.<sup>267</sup> The levels of bureaucracy seemed to be a problem for the NMSs in their dealing with the DG; 'Procedures were a problem for Europe and for the enlargement.'<sup>268</sup> There was a general sense that the DG was not communicative enough and that it was a problem getting answers from it.<sup>269</sup> The CMO units were stated to have been a problem, 'CMO units lived their own lives,'<sup>270</sup> a point shared by an official from another NMS who added that they 'resisted reforms and that their NMS was lucky not to have too many contacts with the CMO units.'<sup>271</sup> And 'CMO unit officials did not like the NMSs interfering in their affairs, CMO cereals was a problem, but the Commissioner was keen about the enlargement.'<sup>272</sup> CMO units showed little concern for the NMSs which experienced difficulties and there was a lack of openness on the part of CMO units to new situations. Their main concern was to keep the old MSs' preferences in place.<sup>273</sup> 'CMO units were very negative to reform.'<sup>274</sup> About the DG was stated, and CMO units in particular; 'a lone MS is ignored by the Commission; you need a group and an old MS to apply pressure.'<sup>275</sup> After the

<sup>259</sup> Interviews with Commission Officials: DG AGRI

<sup>260</sup> *ibid*

<sup>261</sup> Plewa, J. Deputy Minister, Polish Ministry of Agriculture and Rural Development. *Implications of the CAP reform for Agriculture in the New Member States*. <http://www.lufpig.org/pdf/Jerzy%20Plewa%20-%20Implications%20of%20the%20CAP%20Reform%20for%20Agriculture%20in%20the%20NMS.pdf>

<sup>262</sup> 'The application of the transitional period to the new direct payments (those in the milk sector above the level fixed in the Agenda 2000) and the direct payments introduced in energy crops and nut sectors, which are not covered by Regulation 1259/99, changes the conditions of the new Member States' membership in the EU. It points to the possible extension of the phasing-in mechanism on newly introduced payments and new products which are not listed in the Act of Accession.

<sup>263</sup> *ibid* 'Unfortunately the Council Regulations decided in Luxembourg introducing CAP reform and the adapted Accession Treaty are not taking into account the serious concerns expressed by Poland and other new Member States.'

<sup>264</sup> See note 261 Plewa, J. 'We truly hope that the solutions to certain problems with the adaptation of the Treaty of Accession to CAP reform will be found after Accession. We are convinced that the interests of all Member States, including New Member States, will be taken into account on an equal basis in further reforms of the CAP'

<sup>265</sup> Interviews with NMS Officials

<sup>266</sup> *ibid*

<sup>267</sup> *ibid*

<sup>268</sup> *ibid*

<sup>269</sup> *ibid*

<sup>270</sup> *ibid*

<sup>271</sup> *ibid*

<sup>272</sup> *ibid*

<sup>273</sup> *ibid*

<sup>274</sup> *ibid*

<sup>275</sup> *ibid*



reorganization the NMS officials were all pretty well united in stressing that the DG was 'more concrete since the reorganization and aiming to strengthen communication with MSs';<sup>276</sup> 'reorganization of DG AGRI made it much more efficient and effective, management groups more effective and organisation of work better now.'<sup>277</sup> One official stressed that the quality of the proposals had improved since the re-organization as they were better discussed now and what was more they were delivered more quickly. The same official said that the Council needed more concrete proposals from the DG owing to the enlargement and to so make better decisions and added that the enlargement had proven useful for the DG since the old MSs were now 'more diluted.' The DG was encouraging the NMSs to approach it and so using the enlargement; having said that though, 'The old MSs have big influence in the DG.'<sup>278</sup> Half those interviewed considered the DG was prepared for the enlargement. He stated that a recentralization of the Commission was taking place and that it had to happen, combined with some bureaucratisation, in order to improve decision quality.<sup>279</sup> According to one official the DG was not prepared for the enlargement but required that the NMSs be fully prepared; there were not enough experts in time in the DG and in fact in any of the DGs. The example was given that the recruitment exam for the Commission which aimed to get the appropriate experts for grade A8 was performed in 2003 and it took a year to actually recruit them, and this was not yet over. The translation department problems in the Commission, were stressed to be endangering legislation quality owing to their lack of capacity. The DG was criticised for spending more time on the internal staff regulation than they did on the enlargement process.<sup>280</sup><sup>281</sup> Half of those interviewed shared the view that the DG was not prepared for the enlargement.<sup>282</sup> There was only minimal change in the grades given for the DG's performance before and after the enlargement actually took place. There will be four Heads of Unit in the DG from the NMSs; 2 Directors and 50-100 Desk Officers, their numbers being gradually increased.<sup>283</sup> The overall size of the DG is 1000 staff.

With regard to the situation in their national ministries the officials interviewed had this to say. The Czech Agricultural Ministry was not structured to deal with DG AGRI which created problems. The Czechs had to learn to persuade the Desk Officers and the Cabinet together which was not so easy. The ministry officials were stated to see the EU work as being an extra on top of their usual agenda and so they left it for ten people to carry out in an EU department which needs more staff. Most basic CAP structures were stated to be implemented but the various reporting requirements were a problem.<sup>284</sup>

The Hungarian Agricultural Ministry was said to consist of a top layer who were political appointees, which seemed to extend down to the top four ranks; family and political connections were alleged to be important to reach these positions. There was said to be a lack of experts in the ministry and a lack of a middle-aged middle management, combining language skills with expertise. There were stated to be only either older experts with Hungarian language skills or young officials with no expertise or not enough. There were said to be 1000 staff, many of whom were young, 30% or more with no experience. This had created problems and negative results for Hungary in its dealings with the Commission delays etc. It was impossible to deal with all the required procedures, so direct payments had been delayed. In management committees there was the problem that there were no translation services and the older experts at-

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<sup>276</sup> Interviews with NMS Officials

<sup>277</sup> *ibid*

<sup>278</sup> *ibid*

<sup>279</sup> *ibid*

<sup>280</sup> *ibid*

<sup>281</sup> *ibid*

<sup>282</sup> *ibid*

<sup>283</sup> *ibid*

<sup>284</sup> *ibid*

tending could not speak French or English, and the Poles also had this problem. The Hungarians in the Management committees were stated to not say very much. Where implementation was concerned, Hungary was prepared with the only problem the lack of EU experts. Salaries for ministry employees was said to be not a problem. There was said to have been a problematic brain drain to the EU of appropriate staff.<sup>285</sup>

The Estonian situation seems to have been rather different to that of Hungary and the Czech Republic. The ministry was said to be small and flexible and there was no mention of expertise problems or political appointees. The Estonians apparently had been willing to accept the huge amounts of imported *acquis* easily at first owing to the changing legal atmosphere when it began, but this is getting more and more problematic and the fact that only 1-2% of the *acquis* is really discussed before becoming law. Estonia had been more market oriented before with only 4% of GDP going on agriculture. With the CAP, prices went up 5-10%, sugar went up the most, by two and a half times. A certain amount of duplication occurred in networks maybe to create jobs, but this was less a problem for agriculture.<sup>286</sup>

Unfortunately, the Polish official was not very forthcoming about the situation in Poland apart from saying that there were problems with implementation, but the staff in the ministry, young and old, were experienced and there were good lines of communication.<sup>287</sup>

The question inevitably arises whether it might have been better to have left the reforms to one side until the enlargement had taken place. The following points mention Structural Funds but similar criteria also apply to agriculture. One source stated that the structural funds 'create a clear political obstacle to the enlargement process: all current beneficiaries of the regional transfers are trying to avoid losing them, while the current contributors are trying to avoid paying for a much larger bill . . . the arrival of the CEEC countries is likely to create a whole set of new objectives, special clauses, exemptions and "temporary" compensatory transfers.'<sup>288</sup> The situation was not positive leading to the statement that the reforms should be left until after the enlargement, 'As things stand, the first new members are unlikely to get in before 2005 . . . Once in, they could help make the rules, rather than having to accept a fait accompli rigged against them. A messy fight might ensue but that might be better than delaying enlargement indefinitely.'<sup>289</sup> This sentiment is repeated, with suggestions that linking the reform to enlargement could prove to be a 'trap' and 'risks playing into the hands of those who would like to delay the EU's expansion indefinitely, ideally keeping the CAP as little changed as possible.'<sup>290</sup> That said, the enlargement happened and so did some reform of the CAP so maybe the linking of the two was not so detrimental, although the NMSs suffered to help the Commission and DG reform.

The more recent history of the enlargement and the effect of the CAP on the NMSs has not been particularly positive. There seem to be signs that the experience of the NMSs continues to be negative and that the old MS influence and bias in the DG remains in place. The following quotation illustrates this well ' . . . small farmers are unable to withstand the unfair competition of the much better-supported farmers of the original 15 member countries. Over-subsidized, cheap and poor quality food, often hazardous for health, pours into the Hungarian market, trampling domestic producers who are under-financed and under-supported. Accord-

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<sup>285</sup> Interviews with NMS Officials

<sup>286</sup> *ibid*

<sup>287</sup> *ibid*

<sup>288</sup> Boldrin, M and Canova, F. 'Regional Policies and EU enlargement' International Macroeconomics, Centre for Economic Policy research paper no.3744, (2003) p.36

<sup>289</sup> The Economist May 23 2001 'European expansion hits some snags'

<sup>290</sup> The Economist May 24 2001 'A matter of priorities'



ing to the latest report by the Swiss-based Institute for Management, Hungary between 2002 and 2006 slipped 11 places down a list of nations surveyed for competitiveness.<sup>291</sup>

## 6.9 CONCLUSION

So we have seen that DG AGRI seemingly shows many of the weaknesses of the Commission which can be seen from different perspectives to be positive and beneficial for a Policy network. The absence of rigidly observed management structures is not a problem if there is enough of a sense of motivation and mission provided for by European ideology. However, as observed by officials, the loss of the motivated idealists and the motivation of having a policy that drove integration on, exposed the DG to be a large, unresponsive, old fashioned organization. The idealism which drove the CAP to success at the beginning finally became conservative, resisting change rather than making it. Elements in the DG showed the power of 'idealism' or rather sector loyalty as it became, in the absence of Commission integrational dynamism, and small groups to achieve their goals and to resist new comers. In a DG without a positive policy and a Commission that has lost some of its idealistic drive, sector loyalty can dominate. The motivation of the officials involved was not dissimilar to that which forged the Community in the first place. There was a dogmatic quality to their idealism that accepts no argument and saw criticism and calls for reform as opposition to be opposed. The mission of the group was above all else, they are after all protecting their clients and their status.

The apparent success of some CMO units and the other small groups within the Commission to follow their own agenda is explained in part by their motivation, but also by the structure of the DG. Had the Commission been more of a civil service then such resistance would have been harder. But the combination of seemingly loose management structures and competing networks reduced the efficacy of the control of the Commissioner. The fact that some MSs would quite possibly have been happy with quietly opposing the reforms, whilst avoiding being seen to do so on the Agriculture Council, is likely to have meant that members of the hierarchy were less willing to oppose the units involved. After all, the reforms meant even less power and discretion for the DG and of course the hierarchy.

Therefore there is a sense in which several parties in the policy making process would have been quite content with the status quo and so opposed the reforms. The same goes for the enlargement, several MSs were unhappy about it. The DG was seen from this perspective correctly reflecting the European Agricultural sector as a whole. Some elements wanting reforms, some resisting them, some MSs in favour some against. But above all, the CMO units concerned and some of the hierarchy seemingly represented the interests of farmers and the CAP policy as first envisaged. They were willing to hold to this outdated policy with the idealism that they first attached to it years before. Idealism is seemingly difficult to re-steer after initial launch, or at least this is true where it meets sector experts and officials. Guardians of the treaty are left behind by the greater drive and goal, and become guardians of the sector.

The influence of the MSs in the DG after the Delors period was considerable and this was shown. The growing bureaucratization was also outlined, serving as it did the multi-purposes of changing the image of the DG and Commission from dynamic political actor to slow, safe bureaucracy and reducing the power of Policy networks and MSs. Also the case chapter demonstrated that the outsiders, the NMSs lost out as a result. The complex bureaucratic requirements resulting in minimal payments to them in the period stated, and excessive requirements

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<sup>291</sup> Csath, Magdolna. 'The moral deadlock in Hungary and the EU's answer.' EU Observer 23.10.2006

made of them perhaps to make up for DG weakness. The NMSs also suffered from the CMO Policy networks which were seemingly wagging the DG dog at times, and the members of the sector which ensured that the NMSs got a somewhat raw deal in the EAs. Had more political leadership been available in the EU and had the Commission and DG not been quite so defensive, bureaucratized, fragmented, MS and Policy network oriented the enlargement could have been less painful for the NMSs. The existence of the dynamic-defensive cycle of the Commission made matters rather worse for the NMSs than it needed to have been.

#### **Dates of Interviews Held with DG AGRI Officials**

Interviews carried out with ten officials between 18. 06. 2004 and 09.03. 2005

#### **Dates of Interviews Held with NMS Officials**

Polish Official: 22. 02. 2005

Estonian Official: 01. 02. 2005

Czech Republic Official: 25. 02. 2005

Hungarian Official: 15. 02. 2005

Hungarian Official: 24. 02. 2005



## 7. DG ENTERPRISE AND INDUSTRY (DG ENT)

### 7.1 INTRODUCTION

We saw in DG AGRI the amount of power that sectoral policy networks have and can wield. They were able to resist alterations to their CMO which would have meant a weakening of their own position in the DG and their policy network. And we saw the problems that any political authority in the Commission faces when attempting to deal with both policy networks and a strong MS presence which can combine with the policy networks to make any reform difficult. In DG ENV there was a sense that a MS used its influence to stop a policy network. In DG AGRI this was less defined with MSs more evenly balanced in their influence. The enlargement process suffered as a result of the lack of reform and the fact that the NMSs were outsiders often dictated to by the DG and not able to influence its inner workings. OLAF and the EEA both showed the dislike of the Commission and its DGs to reform and anything which was perceived as a threat to it. The dynamic Commission considers itself to need a free hand and to have a mission to protect. Bureaucratisation can serve a useful purpose and in particular OLAF was integrated into this drive almost to the point of having so many tasks and procedures to fulfil that it would not be able to carry out its core function. DG ENT presents us with a relatively new DG which had carried out some major reorganisations already. Like DG ENV, DG ENT is primarily a policy making DG, with relatively few funds to distribute but plenty of influence over the setting of technical standards and the passing of policy which can have expensive consequences. DG ENT will show us a DG with increased MS influence and policy networks but owing to the major reorganisation this will probably be more muted. Bureaucratisation will be an issue as it is in all DGs the question will be as to how serious this has needed to be.

The Community Industrial Policy was achieved to an extent by Commission stealth and no doubt its organisational logic and desire to extend its competences. Strong vested interests seem to have been willing to participate in formidable alliances sometimes of a Policy Network nature with Commission and at times MS direct involvement. The Enterprise Policy of the Commission seems to have followed a similar logic, at least on the Commission side. The diversity of companies involved in the Commission's Enterprise Policy did not make them useful vested interests. So whilst the extension of formal Commission competences into the field in a formal sense was desirable from the Commission perspective, there would be a danger that that would also be where its interests ceased. The small companies involved in the policy served a Commission purpose rather than vice versa. After all, enterprise policy had been an MS sphere before. Not just that, but also the newcomers would face a Commission dominated by vested interests and entrenched Policy Networks bent on controlling the resources available.

The NMSs also found themselves in this situation as newcomers to the EU and Commission. They could be expected to have been faced by similar problems to those facing the small companies. On the one hand owing to having become involved in the EU and the Commission they were more liable to have to accept its products and of course legislation, whilst on the other their actual influence was minimal. Given the situation of the Commission during the period covered by this thesis the newcomers could be expected to have suffered considerably from Commission structural weaknesses and in fact have seen their interests seemingly suffer more than they benefited.

The chapter addresses first the Community Industrial and Enterprise Policies and considers their histories. Before moving on to the creation of the DG itself, its organisation, management and the major reorganization of the DGs which had previously organised the industry and enterprise fields and their combination in the new DG. Policy Networks and their influence are then considered with the ability of MSs and industries to capture the field, and over-influence the DG discussed. The growing bureaucratization of the DG is examined and Commission sectoral fragmentation finally the DG's relationship to the enlargement is addressed and the NMS reactions to the DG outlined.

## 7.2 COMMUNITY INDUSTRIAL AND ENTERPRISE POLICIES: A BRIEF HISTORY

Initially the EEC had little real industrial policy content, after all the Treaty of Rome did not directly specify a common industrial policy. The ECSC and EURATOM had clearer interventionist policies which aimed at creating a common policy and tactic for dealing with the Coal and Steel industries or assisting atomic research in the community. Europe in the 1950s and 60s consisted of several very different national industrial policies in which subsidies, direct and indirect were often present but very diverse. Whilst it was becoming clearer to the Community institutions and the MSs that industrial development and modernisation required common policies in particular in the field of research, little was done of a practical nature. After 1967 when the three Communities were merged the DG for Industrial affairs, (DG Industry or from now on DG III) was set up which a wide portfolio including industrial policy, competition, transport and energy and the internal market. The sheer diversity of the portfolio could be said to have been a recipe for vagueness and inaction.

The reality on the ground in the Community was of MSs with widely differing economic approaches and equally differing industrial policies. It is not surprising that there was little agreement as to what the common policy should be. In March 1970 the Commission issued a memorandum in which it stressed that a structural policy was needed which aimed at integrating the industrial sector to solve the problems of inefficiency and competitiveness, it also stated that “... the process of permanent change which is a feature of modern economies cannot be left to market forces alone.”<sup>1</sup> The 1972 Paris Summit set out a programme for action for creating a Community industrial sector. The Commission, evidently under the influence of the West German authorities, placed emphasis on liberal economics and worker and employer agreements, drew up a programme aiming to harmonise industrial regulations to reach the goal laid out for it and the ‘... removal of barriers to trade, progressive and effective opening up of public and semi public contracts, promoting inter-company competition at European level and sectors facing special problems; the Commission concluded that; “... some industrial sectors deserve special attention either because they are under a crisis or because restructuring at a European level is high priority for them.”<sup>2</sup> The programme was, however important for goal setting but not goal achieving as little momentum was noted. The oil crises of the 1970s ensured that even less was done to follow the common policy and to achieve the goals set. Rather there was a period of the states fending for themselves to try and survive as best they could. Sectoral approaches were used to ease the problems for industry. Subsidies were often used and protection extended to ‘strategic industries’ usually of nationally important

<sup>1</sup> Kuyper, L. *A Policy for the Competitiveness of European Industry* in Darmer, M and Kuyper, L (eds) *Industry and the European Union*, Cheltenham, Edward Edgar Publishing Ltd, (2000) p.26 quoting from Bulletin 5-1970

<sup>2</sup> *ibid* quoting from Communication of 7 May 1973, Bulletin 5-1973



companies.<sup>3</sup> During this period the European Industrial Policy such as existed has been termed 'defensive' and aimed primarily at 'softening the blow' for sectors in trouble from international competition.<sup>4</sup> The MSs held the view for most of this period that industrial policy belonged firmly in their sphere. The apparent failure of this approach resulted in a growing consensus that the internal market had to be completed and that a common industrial policy was an integral element of this. That said, there were some important break-throughs during this period, the principle of Mutual Recognition was expounded by the European Court of Justice in the Cassis de Dijon case 120/78 of 20 Feb 1970; one MS was not allowed to use its standards to block goods acceptable in another MS according to its standards, unless serious health or safety reasons existed. Other principles like that of free movement had existed in the Treaty but not been enforced until the Single European Act (SEA).

Under the guidance of Industry Commissioner Davignon, European Industrial ministers began holding informal meetings in 1980 which led to the formal meetings of the Industry Council beginning in 1984. The European Parliament (EP) was important in the founding of an Industry Policy which it called for in its Resolution of 1981.<sup>5</sup> The Commission issued a communication, '... a community strategy to develop Europe's industry'<sup>6</sup> in 1981 which paved the way for a research and development programme which became the ESPRIT programme. It also expressed the view that companies within the Community should be treated differently, be given preference, to those outside. This policy was not accepted by the Council as it would discriminate against third countries. The Commission tried frequently to reintroduce this idea.<sup>7</sup>

The SEA introduced more measures that followed up on the achievements made previously. The CE mark was introduced to reduce the problems raised by the slow harmonising approach of national technical measures; goods carrying this mark must be circulated freely through the Community as they have been attested to have gone through the necessary assessments. The move from unanimous voting for New Approach Directives was crucial for their success.<sup>8</sup> The SEA set out to encourage research and technological development to improve the Community's international competitive position. An action plan for Small and Medium sized Enterprises (SMEs) was created with the aim of simplifying '... administrative, financial and legal constraints and to encourage cooperation and partnership between firms from different regions of the Community.'<sup>9</sup> The new consensus in Europe was that governments were best at encouraging the right business environment but not at making choices for specific companies; this was reflected in the new industrial policy as finally emerged under Treaty on European Union (TEU).<sup>10</sup>

The Industry Council Meeting in 1990 concluded the industrial policy which had concentrated on sectors and a more general competitiveness goal, and the strengthening of this was endorsed. But certain sectors were still allowed to slip through the net like steel and textiles. Sectors which the Commission considers very important for competitiveness and industrial

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<sup>3</sup> See note 1 Kuyper (2000) p.27-8

<sup>4</sup> *ibid* p.29

<sup>5</sup> *ibid* p. 28

<sup>6</sup> *ibid* p.28

<sup>7</sup> *ibid* p.29

<sup>8</sup> Kuyper, L. *The Internal Market-Economic Heart of the Union* in Darmer, M and Kuyper, L (eds) *Industry and the European Union*, Cheltenham, Edward Edgar Publishing Ltd, (2000) p.55

<sup>9</sup> Hitiris, T. *European Union Economics, Fifth Edition* Harlow, UK Pearson Education Limited (Prentice Hall Europe), (2003) p.296

<sup>10</sup> See note 1 Kuyper (2000) p.31

integration are still monitored actively by the Commission.<sup>11</sup> The TEU introduced a title XIII on industry (Article 130) and in Article 3 a general obligation to improve competitiveness was included. This was the first time that the Community or rather Union, had had a specific industrial policy. The MSs are called upon to coordinate their actions and the Commission is instructed to ‘ . . . take useful initiatives to promote such coordination’. The stated aims are to ‘ . . . speed up the adjustment of industry to structural change, to encourage an environment favourable to initiative and to the development of undertakings throughout the Community, particularly small and medium sized undertakings, to encourage an environment favourable to cooperation between undertakings, to foster better exploitation of the industrial potential of policies of innovation, research and technological development.’<sup>12</sup> The EP is only allocated a consultative role. Unlike national industrial policies the EU cannot use tax incentives. Several other sections and titles in the treaty refer to and are closely related if not part of any industrial policy; although not explicitly included under the industry title, examples are: ‘Title VI on common rule on competition, taxation and approximation of laws; title XI Social policy; title XVII Economic and Social Cohesion; Title XVIII Research and technological development.’<sup>13</sup> The industry article states that the speeding up of adjustment of industry to structural change is a goal. Companies are directly assisted then via the European Regional Development fund and the European Social Fund, these require EP Co-decision.<sup>14</sup>

The period since the TEU saw several changes. Industry Commissioner Bangemann’s high level group called for progress in the information and communication technologies sector; liberalisation of the telecommunications sector was an essential element of this. A Commission Action Plan resulted which addressed the need to apply liberalisation to the telecommunication sector.<sup>15</sup> The Commission in 1995 delivered its Action Programme for strengthening the competitiveness of European industry to: ‘ . . . reinforce the internal market and improve its functioning; coordinate R and D policy with the needs of industry; information society; and promote industrial cooperation.’<sup>16</sup> After the European Council of Essen in 1994 a Competitiveness Advisory Group was set up, made up of top experts. Industry has a strong influence via groups like these.<sup>17</sup> The benchmarking of governments according to their public services’ quality and performance which relate to competitiveness was formally started in 1999 after a three year trial period.

The Lisbon objective and related criteria was decided on at the European Council in March 2000 with the goal to ‘ . . . make Europe “the most competitive and dynamic knowledge-based economy in the world” by 2010.’<sup>18</sup> The ambitious goals were intended to kick start the European economy which despite the 1992 impulse had not generated the hoped for and anticipated economic growth. The link between the enlargement and the Lisbon summit is shown by their being placed in the same paragraph, ‘A successful enlargement has been the overarching objective of the Commission, and remains very important. The setting of a new economic and social agenda designed to increase competitiveness and create jobs has been central to the work of the Enterprise DG. The Lisbon Summit in 2000 marked a major turning

<sup>11</sup> Lawton, T. *Uniting European Industrial Policy* in Nugent, N (ed) *At the heart of the Union*, second edition, (2000) Basingstoke, Macmillan Press p.138

<sup>12</sup> Title XVI: Industry, Article 157 of the Treaty of Amsterdam

<sup>13</sup> Darmer, M. *A definition of EU Industrial Policy* in Darmer, M and Kuypers, L (eds) *Industry and the European Union*, Cheltenham, Edward Edgar Publishing Ltd, (2000)p.15

<sup>14</sup> *ibid* p.15

<sup>15</sup> See note 1 Kuypers (2000) p.34

<sup>16</sup> *ibid* p.36

<sup>17</sup> *ibid* p.37

<sup>18</sup> ERT (European Round Table of Industrialists) ‘*The European Challenge*’ message to the spring European Council March (2003) p.1



point in this endeavour.’<sup>19</sup> However the Lisbon goals were not being achieved as the Wim Kok report stated, other European leaders have been equally clear on this point, ‘Prodi said in the financial times that the Lisbon process “is a big failure”; and Wim Kok said “If we don’t focus strongly on growth, productivity and employment, we will not provide the means to keep the social model.”’<sup>20</sup> Lisbon is a typical piece of Commission and European compromise rhetoric it is ‘about everything and nothing’ and the Kok Mid-Term analysis stressed it had too many targets it hoped to achieve. Whilst the enlargement process is said to have made reaching the Lisbon objectives harder it also offers better hopes for growth too.<sup>21</sup> By 2004 only ‘58% of the European directives linked to the Lisbon process have been implemented.’<sup>22</sup> Some state that Lisbon goals are mostly within the nation states remit ‘... these reforms cannot be remedied by legislation or executive action at EU level because these powers remain mostly with the member states.’<sup>23</sup> But others take a different view that the Lisbon criteria and their subsequent shortcomings are very much also due to the Commission, ‘... the shortcomings of the Lisbon agenda reflect the weaknesses of the Commission’s internal organisation and working practices. It is no longer as capable as it needs to be of focusing the Union on a few objectives and ensuring it has the right instruments for achieving them.’<sup>24</sup> In general, ‘... established interests’ at various levels are responsible more than inertia for the failure of Lisbon, “That the ‘old’ single market is not yet delivering growth and jobs at its full potential can in large part be put down to the successful defence of established interests to the detriment of society at large.”<sup>25</sup> Other reasons are excessive and slow ‘bureaucratic decision-making processes’ and a climate which does not allow enough creativity and ‘pioneer spirit.’<sup>26</sup> Another useful statement which indicates a partial if not complete reason for the economic problems is ‘Too many key reforms for Lisbon are still waiting to be approved and implemented. Firms cannot be successful in business if the system is against them.’<sup>27</sup> The EU and the Commission are fully involved in this system which is highly regulatory and not friendly to business.

The Commission is said to have established the Community Industrial Policy ‘by stealth,’ much along the lines that are expected according to some scholars. The MSs are said to have wanted a minimalist role for the Community in the industrial sphere forcing the Commission to covertly use other tactics, in particular during the 1980s. It is said to have ‘... incrementally evolved its authority through developing and converging its influence in research and development activities, trade policy, competition rule ... the support ... of national governments was achieved through the development of a Commission-led advocacy coalition, centred on a partnership between the Commission and big business, aimed at market liberalisation and competitive enhancement. ... governments were persuaded that it was the best interest of national economies to support Commission activism in many areas of business related policy. The Single European Market initiative was the most visible and ambitious outcome of this Commission policy activism ...’<sup>28</sup> The manner in which the Commission achieved this is

<sup>19</sup> The Enterprise Directorate General *Activities and goals, results and future directions* 20.04.2004 p.7

<sup>20</sup> European Voice 10-17 November (2004) Winneker, C. *No surprise as Lisbon process coincides with tunnel vision*

<sup>21</sup> European Voice 28 Oct-3 November (2004) Spinant, D. *Breathing new life into Lisbon*, and see note 18 ERT (European Round Table of Industrialists) ‘*The European Challenge*’ message (2003) p.5

<sup>22</sup> UEAPME Press release 18.03.2004 *Member States should not use current economic upturn as a pretext to ease up on implementation of Lisbon reforms, UEAPME warns*. UEAPME represents employer’s interests at the EU level for SMEs, Crafts and Trades [www.ueapme.com](http://www.ueapme.com)

<sup>23</sup> European voice 25-31 March (2004) O’Brien, Senior Europe editor at the Economist Intelligence Unit, *Why Lisbon reform process hinders, not helps, the EU*

<sup>24</sup> European Voice Vol.9 No.33, 15.10.2003. Wyles, J. in *Do less to deliver more-a challenge for the next European Commission*.

<sup>25</sup> European Voice 17-23 March 2005. Commission President Barroso

<sup>26</sup> See note 18 ERT (European Round Table of Industrialists) ‘*The European Challenge*’ message (2003) p.2

<sup>27</sup> *ibid* p.15

<sup>28</sup> See note 11 Lawton, (2000) p.132

said to be evidence of the neo-functionalist theory. The planned and active tactic of the Commission '... is seeking to establish certain policy areas as legitimate goals for EU level action, achieving this and then incorporating these policy areas into the treaties.'<sup>29</sup> This is much as happened in the environment sector as well. The Commission can be said to have acted as 'a policy entrepreneur' or 'purposeful opportunist.'<sup>30</sup>

The Community Industrial Policy reflects to a certain degree the views of the MSs who make up the Community at any given time. Thus one group of states: the Netherlands, UK and Denmark are said to prefer a liberal market based industrial policies; whereas France, Spain and Italy are said to prefer greater intervention by the government with massive support being provided for certain companies and sectors.<sup>31</sup> The Community Industrial Policy is said to contain '... an ever increasing competition policy in line with British liberal economic principle; an emphasis on training and employment, corresponding with the social capitalism predominant in Germany and some of its neighbours; and a supportive R and D framework conforming to France's Colbertist nature.'<sup>32</sup> The Single Market Programme is said to '... illustrate vividly the ideological cleavages which persist within the Union, broadly speaking along dirigiste-liberal market lines. The relative weightings of these two tracks at an EU level reveals the tensions within the Union between those who favour a minimalist approach ... and those who prefer a maximalist approach advocating an active, interventionist industrial policy.'<sup>33</sup> The split continues right through the Commission and amongst the officials.

With regards to the relationship between enlargement and industrial policy; there seems to be an amount of catching up necessary, to go by the wording of the 2004 statement of the DG's plans. The wording in the document is of 'must' and 'will' 'Our industry will also soon evolve in an enlarged Europe. EU industrial policy must reflect this. The Enterprise DG has therefore developed a new Industrial Policy (adopted by the Commission in December 2002) which will focus on the improvement of the framework-conditions for developing entrepreneurial activities,'<sup>34</sup> and '... enlargement is a source of unique opportunities for both future and existing MSs. Enlargement will also entail a number of well identified challenges. Industrial policy must fully take into account the specific needs of the applicant and accession countries.'<sup>35</sup> The use of tense indicates that industrial policy and the new Commission policy will in the future come into effect, or at least it should. This is unfortunate considering that the report was issued on the eve of the enlargement. Many of the officials at the DG have probably been, as is hinted in the document, involved in the new and pressing priorities of dealing with the other aspects of enlargement and the worsening economic condition in the EU.<sup>36</sup> But it does not seem to be a sign of readiness by the DG and an indication that its capacity was sufficient for the task.

But to sum up, the well meaning, vast amounts of EU attention '... could result in stifling, rather than unfettering European enterprise ... the overbearing manager of the 1980s has become the over eager promoter of the 1990s. The plethora of European industrial competitiveness committees and expert groups advance a wide array of tools for influencing the business environment and shaping enterprise culture. They might be better advised to simply allow the

<sup>29</sup> See note 11 Lawton, (2000) p.133

<sup>30</sup> *ibid* p.134 referring to Cram (1993) p.134

<sup>31</sup> See note 13 Darmer (2000) p.10

<sup>32</sup> Lawton, T. *Introduction* in Lawton, T (ed) *European Industrial Policy and Competitiveness*, Houndmills, Macmillan Press Ltd, (1999) p.16

<sup>33</sup> Lawton, T. *Fostering Invention and Innovation: Europe's Collaborative R&D Initiatives* in Lawton, T. (ed) *European Industrial Policy and Competitiveness*, Houndmills, Macmillan Press Ltd, (1999) p.44

<sup>34</sup> See note 19 The Enterprise Directorate General *Activities and goals, results and future directions* 20.04.2004 p. 9

<sup>35</sup> *ibid* p.9

<sup>36</sup> *ibid* p.7



single market . . . take effect. A complex array of policy initiatives and artificial stimulants are unnecessary and even unhelpful in shaping these foundations of European competitiveness.<sup>37</sup>

The revival of the national champion's argument is particularly disturbing. The National champions discussion is on again.<sup>38</sup> Maybe it is significant that the DG in its activity and specific objectives in 2004, stated under competitiveness and sustainable development title under subtitle Industrial policy, ' . . . specific sectoral initiatives will be launched in business related services, textiles, fashion and design, automotive, pharmaceutical, mechanical engineering and non-ferrous metals industries.'<sup>39</sup> One wonders how this compares with the horizontal goal of competitiveness which the Commission had been highlighting, and this is explicitly stated under the industrial policy title, as ' . . . the objective is to carry out Industrial Policy through proper analysis as a basis for action mobilizing all relevant policies and responding to the needs of industry at both horizontal and sectoral level.'<sup>40</sup> Responding to the needs of industry at a sectoral level, might entail more old fashioned industrial policy again rather than the holistic competitiveness approach.

In conclusion, regarding the Commission and its general industrial policy ' . . . the patchiness and inconsistency of EC action are still evident . . . The Commission still operates more like a confederation of functional divisions engaged in piecemeal intervention rather than an integrated entity with more than a rhetorical common purpose.'<sup>41</sup> It is also interesting to note that the majority view of the top officials throughout the Commission, around 80%,<sup>42</sup> was that 'capitalism should be regulated'<sup>43</sup> and the Commission should protect ' . . . a conviction that European capitalist societies both were and ought to be different.'<sup>44</sup> 20% held the view that in the 1990s 'public interventionism, protectionism and overregulation'<sup>45</sup> should be stopped, the majority of this group were in the competition and internal market areas. Hooghe's work, referred to above, was published 1999 and by this point the internal market DG had been separate from DG III for some time. Thus whilst DG III is said to have had a proportion of liberals by the late 1990s they may well have become less in number as the more convinced liberals split off into the internal market DG. What is alarming is that neither the Council nor the Commission appear to have learnt that the days of achieving better economic performance by focusing on industry (or specific industries) are past, as the following quotation illustrates. 'The fact that the Commission is requested to draft a paper containing proposals on how to increase the competitiveness of European industry is a dangerous sign: most of the improvement in the productivity performance of the US economy in recent years has come from services, not from industry . . . Any attempts to strengthen European industry could only come at the expense of the rest of the economy, i.e. services. Taxing the future to preserve the past has been done before, as with the common agricultural policy but it is hardly a recipe for faster growth.'<sup>46</sup> SMEs are particularly strong in services.

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<sup>37</sup> Lawton, T. *Conclusion* in Lawton, T (ed) *European Industrial Policy and Competitiveness*, Houndmills, Macmillan Press Ltd, (1999) p.238

<sup>38</sup> The Economist Special report Europe's Future, May 27 2006 p. 22

<sup>39</sup> See note 19 The Enterprise Directorate General *Activities and goals, results and future directions* 20.04.2004 p.37

<sup>40</sup> *ibid* p.36

<sup>41</sup> Menon, A and Hayward, J. *States, Industrial Policies and the European Union* in (eds) Menon, A and Kassim, H. *The European Union and National Industrial Policy*, London, Routledge (1996) p. 273

<sup>42</sup> Stevens, A and Stevens, H. *Brussels Bureaucrats?* (2001) Basingstoke, Palgrave p.200 referring to Hooghe 1999b p.365

<sup>43</sup> *ibid*

<sup>44</sup> *ibid*

<sup>45</sup> *ibid*

<sup>46</sup> European Voice 1-14 April 2004 Gros, D. *Only lip-service being paid to Lisbon plans*

### 7.3 ENTERPRISE AND SMEs

Enterprise Policy is directly linked (seemingly in competition at times) to Industrial Policy in the Commission and both are found in the same DG. Industrial Policy has been discussed which was primarily the work of DG III one of the three elements involved in the merger that resulted in DG ENT, now the policy of DG enterprise policy, distributive trades, tourism and cooperatives, also known as DG SME, (from now on DG XXIII) will be considered. SMEs were the main thrust of the new policy approach and showed that the Community and the Commission appeared to be aware of the need for a policy concentrating more on SMEs. These companies are said to be 99.8% of all the companies in the Community, 15.8 million in total with 66.52% of the population employed in them. They are said to account for two thirds of the Community's turnover and are the major job creators. These are impressive statistics and obviously competitiveness and unemployment cannot be addressed without considering them. But SMEs are a divergent group covering companies which can be classified as micro with below 10 employees to those with 250 and from a minimum turnover to those with 40 million ECU.<sup>47</sup> The sheer number of the companies in existence shows the problem of treating them as a single group. Regardless, the Community decided that an enterprise policy was necessary and in 1983 the 'European year of small and medium sized enterprises and craft industry' was held. In 1986 a task force was set up for SMEs which in 1989 became DGXXIII. The intended tasks of the DG were to represent the SMEs in particular in the Commission and to monitor and ensure that all DGs kept in mind the effects of legislation on SMEs. A lot of legislation carries costs and burdens as well as 'administrative procedures or requirements.'<sup>48</sup> The DG stated that the main problems for SMEs were financial, dealing with changes of ownership and dealing with 'administrative complexity.'<sup>49</sup>

Throughout the 1980s very few resources were provided for helping SMEs, despite the encouragement, the Community remained attached to the idea that Competitiveness was best secured by backing national champions, this was true until the early 1990s. A change began with Article 130 of TEU which specified the scope for the new enterprise policy '... encouraging an environment favourable to initiative and to the development of undertakings throughout the Community, particularly small and medium sized undertakings.' The Council agreed 110 million ECUs for the policy from 1990-1993, for the first multi annual programme. For the period 1993-96 112.2 million ECUs were provided. For the period 1997-2000 180 million ECUs were allocated. These figures should be compared to the amounts made available to Research and Development to which the Community allocated 2.4 Billion ECUs in 1992 and 4.2 ECUs in 1997.<sup>50</sup> Whilst there was an intention to see that SMEs<sup>51</sup> get a proportion of this, the vast majority of SMEs were hardly likely to be affected by it. The first integrated programme for SMEs was announced in 1994 it aimed '... to assemble the various initiatives into a global framework, with a view to ensuring their coherence and giving them a high profile.'<sup>52</sup>

The Madrid European Council of 1995 set a list of priorities to be reached by the programmes: they were to: '... simplify and improve the administration and regulatory business

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<sup>47</sup> Hodges, M and T. Lawton. *Promoting Competitiveness: Inward Investment Incentives and Enterprise Policy*; in Lawton, T. (ed) *European Industrial Policy and Competitiveness*, Houndmills, Macmillan Press Ltd, (1999) p.214

<sup>48</sup> *ibid* p.217

<sup>49</sup> *ibid* p.217

<sup>50</sup> See note 33 Lawton, (1999) p.39

<sup>51</sup> Darmer, M *Small and Medium Sized Enterprises Create Growth and Jobs* in Darmer, M and Kuyper, L (eds) *Industry and the European Union*, Cheltenham, Edward Edgar Publishing Ltd, (2000) p.296

<sup>52</sup> See note 51 Darmer (2000) p.298



environment; improve the financial and fiscal environment for SMEs; help SMEs to Europeanise and internationalise their strategies, in particular through better information and cooperation services; enhance SME competitiveness and improve their access to research, innovation, information technologies and training; Promote entrepreneurship and support special target group.' Three measures to implement the above were agreed upon: 'A. Concerted actions; to increase the efficiency of member states' actions by exchange of best practices between member states . . . B. Actions under other Community policies - the Commission is to ensure better coordination of the various contributions that the Community makes in favour of SMEs through its different policies and programmes . . . state aid policy . . . regional policy . . . research and development . . . C. The multi annual programme for SMEs . . . Euro Info Centre . . . Europartenariat . . . to promote direct contact between SMEs by organising two contact events a year where SMEs can meet . . . JEV . . . the Joint European Venture initiative . . . to support and encourage the development of transnational joint ventures between SMEs in the Community . . . ' <sup>53</sup>

Some important SME initiatives taken have been those related to improving the business environment for SMEs by dealing with the late payment problem by larger companies to SMEs, a directive was agreed in 2000 which addressed this issue. The European Investment Fund EIF was created which grants loan guarantees to trans-European project networks.<sup>54</sup> Directives have been passed which aim at ' . . . the simplification of conditions of access to insurance markets, subsidised loans for job creating SMEs.'<sup>55</sup> Other funds are disbursed from the URBAN, REGIS and RETEX Community programmes. The EIB and European regional development fund and the European social fund also provide more financial opportunities to SMEs.<sup>56</sup> The BEST task force of entrepreneurs, civil servants and academics was set up in 1997 with the remit of ' . . . improving the quality of legislation and for removing unnecessary burdens.' The task force produced a report with recommendations which the Commission then set up an action plan to achieve; the Council watered these down in 1999.<sup>57</sup>

The last few years have shown the differences between the SMEs and their needs and big industry's. REACH, the EU chemical's directive, showed the different requirements of SMEs and large industrial giants and also showed the tensions between them. Basically REACH requires the registration and evaluation of chemicals, carried out by expensive testing performed by a new European chemicals agency. By grouping companies together who use a chemical, costs can be shared and multiple registrations avoided and the additional testing that would be involved. OSOR would archive the information and only requires companies to share non core data.<sup>58</sup> Logically enough SMEs would benefit greatly from this approach and if it is not adopted they would pay considerably as 'downstream users.'<sup>59</sup> The problem was the definition of core data, 'too wide a definition and industry will complain, too narrow and SMEs will be left with the costs.'<sup>60</sup> The large companies and Cefic the European chemical federation demanded an opt-out from OSOR.<sup>61</sup> Interestingly enough the large companies with the support of the European consumers' group were pushing for a different approach to chemical registration based on risk rather than quantity,<sup>62</sup> which would appear to then favour the producers of large quantities, the large companies, DG III had previously worked with the

<sup>53</sup> See note 51 Darmer (2000) p.299-304

<sup>54</sup> See note 47 Hodges: Lawton (1999) p.217

<sup>55</sup> *ibid* p.217

<sup>56</sup> *ibid* p.218

<sup>57</sup> See note 51 Darmer (2000) p.307

<sup>58</sup> European Voice 7-13 April 2005. Glass J. *OSOR-One Substance. One Registration. No headaches?*

<sup>59</sup> *ibid*

<sup>60</sup> See note 58 European Voice 7-13 April 2005

<sup>61</sup> European Voice 7-13 April 2005. McLaughlin, A. *Reaching out for a chemicals compromise*

<sup>62</sup> *ibid*

group on the issue of pharmaceuticals the results of which industry finally accepted too (this is suggestive of the existence of a European network). The SMEs were the big losers and were seen as being too burdened by the costs of REACH, according to the Dutch presidency; the Commission had predicted it would cost 2.3 Billion Euro, the Dutch calculated 4 Billion;<sup>63</sup> the SMEs were also said to be those least able to deal with the complicated REACH procedures owing to a lack of technical staff, and the costs of taking on such individuals could be ruinous.<sup>64</sup>

In the field of IT research funding the familiar picture emerges of SMEs being under represented and increasingly so. It would seem logical to point to the disappearance of DG XXIII in the new DG ENT as adding to the decline of SMEs and their representation, '... the interim finding of a panel of experts conducting a five year assessment of the impact of EU research in information technology (IT). It finds that the public funding of IT has let down small and medium sized enterprises (SMEs) and the ten new member states ... participation of SMEs and Europe's new member states in IT research has, so far, been drastically lower in the current Framework 6 programmes than in its predecessor Framework 5, and the panel blames the introduction of large new integrated projects ... The panel calls on the Commission to rethink its strategy on the use of integrated projects and to look at developing mechanisms to integrate SMEs and new member states more effectively in EU Research.'<sup>65</sup> It is interesting to note that SMEs and the NMSs both suffered under Framework Six's structure and the increase in project size criteria and 'have been let down' by it.<sup>66</sup> It would appear to have been fairly obvious that large integrated projects would benefit the larger players and companies rather than the SMEs with their more limited resources.

The assessment of SME initiatives is far from positive 'SMEs have accrued little tangible benefit to date ... those programmes which have been developed by both the EU and its member states to assist SMEs have been inadequately focused and integrated.'<sup>67</sup> All in all, despite the attempts to make changes throughout the 1990s by the last couple of years of the decade the picture seemed very unchanged, Community level initiatives were not coherently 'complimented' at member state level, 'The potential pitfall centres on the extent to which the EU is merely paying lip service to the prevailing policy fashion or, in fact, genuinely means business. The evidence from R and D programmes, human capital schemes, and other industrial policy realms, reveals that EU policy is still primarily benefiting large companies. This proportional balance is shifting but remains far from the Commission's stated intention of being the promoter of SMEs rather than the subsidiser of large companies.'<sup>68</sup> The late 1990s still saw the SMEs in a rather weak state in terms of their representation in the Commission, with the European small businesses association the UEAPME excluded from crucial discussions being held regarding the rights of part time workers. The Commission had the trade unionists present and UNICE which represents European industry employers and also stated that it spoke for SMEs too, however the specialised association for SMEs is the UEAPME and it was excluded from the talks.<sup>69</sup>

A basic economic problem with Commission and EU policies has to be stated here as well; recent studies into SMEs and their alleged important role to the European economy '... cast serious doubts on the European Commission's single minded belief that small and medium

<sup>63</sup> European Voice 7-13 April 2005. Nassauer, H. MEP

<sup>64</sup> *ibid*

<sup>65</sup> European Voice 15-21 July 2004 *IT research funding "not sufficient"*.

<sup>66</sup> *ibid*

<sup>67</sup> See note 47 Hodges: Lawton (1999) p.219

<sup>68</sup> *ibid* p.223

<sup>69</sup> European Voice Vol.3 No 26. 03.07.1997 *SMEs challenge exclusion from talks*.



sized enterprises provide the key to cutting into Europe's disastrous unemployment figures.' The Commission's approach was too simplistic to effect any real benefit to the SMEs concerned, let alone job wise. In fact the final conclusion of the studies was that the '... studies offer no basis for the specific promotion of the SME sector by direct or indirect means.' The reaction of the Commission to the studies was expected to be negative '... it will come as a blow to the Commission, which continues to insist that renewed efforts must be made to support the small business sector.' Not surprisingly the Commission and the then DG XXIII defended the SME policy;<sup>70</sup> this was in January 1997 and no change took place at all until 2000 with the reorganisation and subsequent merging of DG XXIII with DG III. In fact the Commission still professes and builds much of its arguments on the need to help the SMEs. Another study stresses that support for SMEs should be 'de-emphasised', since 'it is our view that such national policies are by far more effective (when properly implemented) and relevant, than some general subsidies coming from Bruxelles, linked to complicated business plans the elaboration of which is often too demanding for truly small companies.' Whilst the academics writing this report are most interested in structural funds the basic idea can be expected to hold true for SMEs and the policy related to them in general.<sup>71</sup> The suspicion has to be that the Commission had and has its own interests for at least paying lip service to the notion of SME promotion which benefited its competences, but little real desire to more, whatever groups of officials and in particular those involved in DG XXIII attempted to do.

Part of the problem was that there is a lack of consensus that SMEs should be supported at the EU level, '... policies for SMEs are principally the business of national or regional authorities ... There is little evidence to suggest that this role is changing or that Member states and regional authorities are willing to cede their role in SME development to Brussels.'<sup>72</sup> The vast majority of the MSs have their own SME policies which cover most of the necessary actions<sup>73</sup> to support and promote SMEs 'The activities of almost all member states leave little room for the Community to conduct an SME policy at Community level which is different from, and adds value to, what member states already do.'<sup>74</sup> Furthermore the majority of SMEs are said to be narrowly focussed on their locality or region and hard for national governments let alone the Community to help.<sup>75</sup> There was a feeling that whilst some elements of the Commission and Community favoured SMEs and maybe desired to appear to be favouring them, others were less convinced for an array of possible reasons which will be discussed later. Regardless of economics and economic arguments and studies made, rhetorically the SMEs stood and stand high in the Commission's esteem but, in practice, where some assistance would have been helpful in terms of not burdening them with legislation this has not occurred.

From January 2000 with the creation of the new DG a programme was set for 2000-2005 which aimed to make Europe the '... most competitive and dynamic knowledge based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion.' Multi annual programmes for enterprises were set up, targeting SMEs. An action plan for innovation was founded which aimed to: promote an innovation culture, to set up a good business environment with legal, regulatory and financial provisions to encourage innovation and finally to establish real links between research, innovation and

<sup>70</sup> European Voice Vol.3 No.2, 16.01.1997, Mann, M. *Study queries crucial role of EU's small businesses.*

<sup>71</sup> Boldrin, M and Canova, F. *Regional Policies and EU Enlargement* Centre for Economic Policy Research 2003 paper no. 3744 p.38

<sup>72</sup> See note 47 Hodges; Lawton (1999) p.218

<sup>73</sup> See note 51 Darmer (2000) p.295 Table of implemented and planned national actions by fields and countries 1996-97, in European Network for SME Research 1997

<sup>74</sup> *ibid* p.296

<sup>75</sup> *ibid* p.297

business. Industrial competitiveness was to be enhanced and the environment was to be incorporated into industrial policy.<sup>76</sup>

Unfortunately the recent history of the SME policy has not been inspiring; the last Commission did not produce the hoped for benefits for SMEs that had been expected. It remained the case that big businesses appeared to benefit from legislation which took their needs into consideration but not those of SMEs, '... our main criticism is that legislation at European level is done for a minority of businesses,' some of the laws agreed by the main institutions '... missed chances to back SMEs and even worse, took decisions against their interests.'<sup>77</sup> There has been awareness that SMEs have not had an easy time of it in the new DG as the statement of the senior official in 2001 reveals; '... a lighter regulatory environment has to rely on self regulation, not only for an exclusive industry club, but also for SMEs.'<sup>78</sup> From the statement it is possible to conclude that within the DG there was a need in 2001 to try to counter balance the weight and influence of 'an exclusive industry club' which had evidently been able to use the DG to secure more 'self regulation.' After the creation of the DG ENT, the SMEs saw reductions in funding which affected their participation in discussions '... on technical standards for businesses' and led some to ask questions, '... the group questions whether the EU still has an enterprise policy, given proposed reductions.' The reduction in size of the enterprise department was also questioned the, '... slimmed down enterprise department' within the new DG was seen to be a cause for concern, and did seem incongruous with the stated importance of SMEs.<sup>79</sup> The UEAPME also expressed its concern over the reduction in the role of the European Investment Fund (EIF), which had worked closely with the disbanded DG XXIII, and thus probably funding available for SMEs. After the creation of the new DG many of the EIF's activities were taken over by the EIB.<sup>80</sup> Whilst 'political rhetoric' stressing the importance of SMEs was everywhere, the practice showed little progress with really useful items like an '... overhaul and update of European Company law' not occurring along with other 'measures ... to support and facilitate the expansion of SMEs in the EU.'<sup>81</sup> This is particularly odd given that the Lisbon process aims to create millions of new jobs and SMEs are seen to be the key for the generation of these jobs. The following quotation stresses the importance of the SMEs and queries the lack of support they have received, 'The European Parliament has published the questions that it intends to put to the newly nominated Commissioners ... and Günter Verheugen, whose proposed portfolio encompasses enterprise and industry, will field questions on the Lisbon Agenda ... SMEs are the backbone of the economy, responsible for creating millions of new jobs and therefore vital to attaining the Lisbon objectives, MEPs will tell Mr Verheugen. They therefore want to know why little progress has been made with regard to SMEs in terms of financial support and the encouragement of entrepreneurship ...'<sup>82</sup> The lack of practical interest in SMEs was stressed 'Despite a general acceptance of the importance of SMEs to the EU economy, the vast majority of small firms are ignored under Commission programmes and in crucial policy statements, most recently the conclusions of the Lisbon spring summit.'<sup>83</sup> Particularly odd from this perspective was the decision to in essence disband DG XXIII as it was merged to form DG ENT; this seemed a strange method of boosting SMEs. The new DG was, after all, set up in part at least to align the DGs involved in the Lisbon objectives with them.

<sup>76</sup> See note 9 Hitiris, (2003) p.298-299.

<sup>77</sup> European Voice Vol.11 No.8 . 03.03.2005 Anspach,R. UEAPME spokesman in *Next parliament "must think small"*.

<sup>78</sup> European Voice Vol.7 No.13. 29.03.2001 *Enterprising DG post for union chief*.

<sup>79</sup> European Voice Vol.6. No 24. 15.06. 2000, Cordes, Renee. *SMEs attack funding cuts*.

<sup>80</sup> European Voice Vol.6 No 26. 29.06. 2000, Cordes Renee *Small firms demand EIB pledge*.

<sup>81</sup> European Voice 12.02.2004 Vol.10 No.5 *SMEs need help now to spread their wings*.

<sup>82</sup> EU Business (2005), *Parliament reveals questions for Commissioner hearings*. At [www.EUBusiness.com](http://www.EUBusiness.com)

<sup>83</sup> UEAPME Press release 19.04.2005 *Competitiveness Commissioner told not to forget traditional businesses*



Evidently the general fear was there amongst the SME supporters that the new DG would not support the SMEs as much as DG XXIII had done, '... the first actions of the Prodi Commission, which forced us to adapt to the fact that there is no longer a Directorate General for SMEs, and that all entrepreneurial issues, no matter if the enterprise is big or small are now treated by just one Directorate General. We tried and will go on trying to assure that DG Enterprise... defends the interests of enterprises... and of small enterprises in particular, within this Commission.'<sup>84</sup> The report of 2001 states that from the Commission came '... a general feeling of insecurity,' and this was especially so for the new DG; '... we had the impression that the Directorate General was still searching for its position. Lately, we have seen a new departure of the DG towards a coherent SME policy.'<sup>85</sup> These show the negative effect that reorganisation can have on a DG which can last years, and also that official Council-approved policy, like the Lisbon Agenda, was not necessarily taken seriously in the DG. SMEs have not been as well served as big industry by the Commission as the next quote illustrates, '... the Commission should take SMEs more into account in its strategy. SMEs must be put in a position from which they can compete on a level playing field with big industry within a global economy. Policymakers at European level have to take into account the specific characteristics and needs of SMEs...'<sup>86</sup>

There seemed to be a real danger that the new DG was concentrating too much on the needs of big industry with well established lobbies rather than on SMEs, '... the EU Commission should change their mind and their old fashioned and technocratic mentality, which takes just big companies and strong lobbies in account. For example, during decades, they just ignore the responsibilities of SMEs in social dialogue and excluded their organisations as social partners. The SMEs are not well recognised, not enough consulted and simply forgotten. It's the reason I think, that now it's time to nominate a new SMEs Commissioner coming from the new member states. She or he should act as a SME ombudsman and promote SME friendly policies.'<sup>87</sup> Once again the link up between the SMEs and the NMSs was made.

Some of the projects for SMEs which the Commission launched both before but particularly after the merging of the DGs showed problems, 'The European Charter for small enterprises which was adopted in spring 2000 in Lisbon and whose content meets exactly our needs, has only reluctantly been integrated into the official policy for small and medium sized enterprises.'<sup>88</sup> With regard to the charter '... although broadly welcomed by the SME community... the Charter has subsequently proved ineffectual in its overarching objective of improving the environment for small businesses. We are now gravely concerned that the February 2004 Action Plan seeks merely to build on the charter for small enterprises, setting out a list of limited objectives that will fail to tackle the more fundamental challenges that policy makers must meet if they are to contribute significantly to increased entrepreneurial activity in Europe.'<sup>89</sup> This would reinforce the notion that the EU and Commission allow real reforms to be ducked from by carrying out a cosmetic exercise like the Charter; in and of itself it might have been useful if the DG and the Commission had taken it more seriously but this does not seem to have been the case; the very broad '... scope of the small enterprises Charter' would be broadened still further and that added the danger that it '... will further dilute the Charter and make it even less capable of achieving its aim...'<sup>90</sup>

<sup>84</sup> UEAPME annual report 2000 p.7 Müller H.W. Secretary General of UEAPME

<sup>85</sup> UEAPME annual report 2001

<sup>86</sup> *ibid* p.9

<sup>87</sup> SME Union Annual report 2004 p.9 Malosse, H. President of the ECO section at the Economic and Social Committee of the EU. SME Union of the European People's Party on the European Parliament

<sup>88</sup> UEAPME annual report 2001 p.7 Müller H.W. Secretary General of UEAPME

<sup>89</sup> Smallbusiness/Europe 2004 *EU spring summit joint position paper from leading representatives of the UK SME community at www.smallbusiness-europe.org*

<sup>90</sup> UEAPME Press release 15.02.2005 'Proposed revision will dilute small enterprises charter.'

In the area of including the SMEs and their representatives into the lead up to the making of legislation, the Commission seems to have been rather unfair by wanting 'broad open consultations' which seem to be attempting to sidestep representative organisations since '... small business owners do not have the time to answer complex executive questionnaires ...'.<sup>91</sup> This was particularly true since the Commission then also only allowed 6 weeks for the consultations as compared to the UK government which itself allowed 12 weeks. Documents are stated not to have been ready in time for meetings and these appear not to have been announced well enough in advance, 'UEAPME would like to stress that some recent "consultations" launched during the last week of July by some DGs, in full holiday period, are an absolute mockery of the consultation principles.'<sup>92</sup> Thus SMEs do not appear to have been taken very seriously in the pre legislative phase of stakeholder involvement.

The SME initiatives that the Commission has supported like: the Observatory of European SMEs; the Multi-annual Programme for Enterprise and Entrepreneurship and the SME envoy who was created in DG ENT, have all had a mixed record and do not appear to have helped the SMEs much. The creation of the envoy seems to rather prove the lack of effect of the rest of the DG-Commission's SME policies. The envoy was to try and protect their needs in DG ENT. The subsequent creation of the DG inter-service 'SME Network' to perform similar tasks to the envoy seemed to prove the underlying inability of the DG and the Commission to do more to affect the problem than create more actors. Good for the officials maybe, DG ENT was argued by some to be over staffed,<sup>93</sup> and the Observatory was well met by officials, but no-one else seemingly benefited, the '... foreseen impact of the activity of the Observatory is not evident.'<sup>94</sup>

Legislation and red tape are an area where the DG has shown itself to be somewhat weak as both are seemingly constantly increasing and creating problems for entrepreneurs, and better understanding of SMEs at European as well as national level would be an important step in remedying this. The fact that this does not occur enough shows the need for the DG and the Commission to involve themselves in the affairs of the SMEs that they desire to promote more, or to involve themselves less, via less legislation; one or the other has to be chosen.<sup>95</sup> Some red tape is inevitable and is the '... result of the legitimate requests for public intervention made by society in a variety of areas ...'; but the DG accepted that the problems for SMEs are sometimes '... the result of poorly conceived regulation.'<sup>96</sup> It further stated that; '... the weight and complexity of regulations affects smaller businesses disproportionately, yet they are often conceived with larger companies in mind.'<sup>97</sup> The general problem was/is that the Commission does not take into account SME problems when making legislation and so more comprehensive impact assessments are badly needed.<sup>98</sup> Big industry on the other hand is better organised and has greater resources as well as years of tradition to build on, 'EU legislation is closely monitored and strongly influenced by multinational corporations. SMEs on the other hand lack often the necessary financial and personal means to get their voices effectively

<sup>91</sup> UEAPME position paper on COM(2002)277 final 07.2002 p.2

<sup>92</sup> *ibid* p.3

<sup>93</sup> Interview with Commission Official: DG ENV

<sup>94</sup> Centre for Industrial Studies; Milan, Institute for Social Research; Milan, *Ex-post Evaluation of the Observatory of European SMEs, final report, prepared for European Commission, DG Enterprise*. p.127

<sup>95</sup> UEAPME position paper on the Green paper on entrepreneurship 07.2003 p.4-5

<sup>96</sup> See note 19 The Enterprise Directorate General *Activities and goals, results and future directions* 20.04.2004 p.15

<sup>97</sup> *ibid* p.15

<sup>98</sup> See note 95 UEAPME position paper 07.2003 p.4



heard on the European, in particular on the EU level.<sup>99</sup> That said red tape and problems with it are hardly a Commission speciality, reducing bureaucracy or promises to do so always sound good and in Germany for example promises have been made to reduce bureaucracy regularly by every government since that of Willi Brandt, however they have come to nothing and more has built up instead.<sup>100</sup>

The problem is that when promises and expectations are made, then measurements are likewise created against which the new Commission can be measured. It has proven to be as unable or possibly unwilling to change the regulatory climate as the previous Commission was, 'The Commission promised to create a more favourable jurisdiction for enterprises. New legislation is supposed to be in line with an ex-ante impact assessment, in particular with regard to SMEs. The Commission also assured that existing legislation should be streamlined accordingly. After a hundred days in office, however, the Commission's performance is anything but impressive. Be it improvements of the chemical's legislation (REACH) or the financing of SMEs, the Commission hardly does more than pay lip service. A real cross sector focus on SMEs can neither be found in the Commission's strategic guidelines nor in its work programme. The Commission apparently concentrates more on the large scale industry. A recent example is the composition of the automobile high level group.'<sup>101</sup>

There needed to be a '... real simplification of EU legislation with a drastic reduction of the number of EU directives ...'<sup>102</sup> and the SLIM project aimed at simplifying legislation was launched in 1995.<sup>103</sup> Promises were made to cut 100 directives and the Commission wanted to trim 35,000 pages of obsolete rules etc from *acquis*.<sup>104</sup> However the awaited simplification was evidently still not present in 2005, 'The subsequent exercise by the Dutch Presidency, to identify priority areas of EU legislation for simplification, reflects a view long held by the SME community: that policy objectives may be attained more efficiently through the simplification of existing legislation: measures must now be taken by the Commission to fast-track the implementation of the Council's simplification recommendations ...'<sup>105</sup> The new Commissioner for Competitiveness stated in 2005 that the Commission aims to indicate sectors where legislation should be simplified and the programme to do this by autumn.<sup>106</sup>

The goals of simplification and reductions in the quantity of legislation did not occur. The political level of the Commission, here European Commission vice-president Guenter Verheugen blamed the top members of the DG hierarchies for the problems, 'He suggests that his own project to simplify 54 EU laws has fallen foul of stubborn commission bureaucrats. Before the summer he "strongly criticised internally some general directorates who evidently did not want to take the head of the commission's aim to reduce bureaucracy seriously, because it did not fit in with their own ideas."<sup>107</sup>

Linked to the need for simplification, is the need for the legislation which is made to be of high quality and to be coherent, 'Particular consideration needs to be given to the disproportional

<sup>99</sup> The SME Union 'The Entrepreneur' March 2003 No 6 p.6 Kauppi P-N, MEP *Politics is about setting priorities More EU-money for European SMEs!* The Entrepreneur is the newsmagazine of SME Union of the European People's Party on the European Parliament

<sup>100</sup> Röttgen, N CDU, MP, 16.11.05 in 'Hart aber Fair' on ARD

<sup>101</sup> SME Union Annual report 2004 p.15. Radwan, A. MEP and President of the SME Circle

<sup>102</sup> *ibid* p.9 Malosse, H. President of the ECO section at the Economic and Social Committee of the EU

<sup>103</sup> Peterson, J and Bomberg, E. (1999), *Decision making in the European Union*, New York, St, Martin's Press p.73

<sup>104</sup> European Voice Vol. 9.No 7. 20.02.2003 *Liikanen vow to cut 100 directives*

<sup>105</sup> Smallbusiness/Europe March 2005, *Contribution from the UK's leading SME representatives to the mid-term review of the Lisbon strategy.*

<sup>106</sup> European Voice 7-13 April 2005 *Enterprise chief demands more impact assessments*

<sup>107</sup> Mahony, H 'Commission bureaucrats are getting too powerful, says Verheugen' EU Observer 05.10.2006

tionately high impact that poorly drafted legislation can have on smaller businesses.’<sup>108</sup> However this does not appear to be the case in many instances, ‘In recent years legislative initiatives proposed by the Commission often lacked coherence to the point that some beneficial measures for SMEs were promptly choked-up by proposals from other Commission services that added burdens for small enterprises. Therefore, the association calls for the new Commissioners to live up to their promise by increasing the capacity of DG ENT and by better coordinating the work of all General Directorates.’<sup>109</sup> The problem of coherence was evidently still there a year or so later in 2005 ‘Commissioner Verheugen and DG Enterprise should take a lead role in overseeing the Commission’s work programme and guaranteeing consistent and coherent policies are followed.’<sup>110</sup>

In part the problem lay with the sectoral fragmentation of the Commission during the Presidencies of Santer and Prodi. The issue of Commission fragmentation is discussed in greater depth under the section ‘Commission fragmentation.’ DG gains were then seemingly formalized in the decentralisation of the Commission; this saw DGs apparently acquiring new administrative competences and independence seemingly owing to a College desire to delegate responsibility as well as the power which had already gone to the DGs. The idea was good in an organization worried about accepting any responsibility, but led to even less coordination and communication between DGs and a decrease in their willingness to work together. Various DGs can generate legislation which will directly affect SMEs and these have to be involved in any attempt to improve the quality and SME fairness of legislation, for example those DGs dealing with environment, social matters and those of foodstuffs. The involvement of several DGs with very different sectoral clientele all of whose objectives are mentioned in the Lisbon objectives and conclusions: ‘ . . . the Lisbon conclusions recognised the importance of a cohesive approach to meeting environmental, social and economic objectives. This must be reflected in the work of the EU institutions in a small number of key policy areas during the coming months . . . ,’ and ‘prioritization in policy-making is as important as efficiency in legislating and we would advise officials and politicians to focus on achieving significant progress in a few key areas. The 25 EU member states must each take responsibility and action to contribute to the Lisbon process . . . ’<sup>111</sup> The Commission needs to be able select from the vast array of policy possibilities in front of it some projects that will advance the Lisbon objectives significantly, and not to try and do everything all at once which an organisation with limited resources like itself cannot afford to attempt, but this is evidently difficult for the Commission owing to the lack of coordination between the DGs.

One solution to the problems of the decentralisation of the Commission was to introduce the Legislative Impact Assessment (IA) procedure which would involve all the DGs in the generation of legislation at a much earlier time than had previously been the case. Under Delors there was said to have been ‘ . . . inter service coordination . . . now it is gone . . . which is why IA is needed . . . if people at the base could agree then the top would do too.’<sup>112</sup> The Sapir report made in 2003 urged the greater use of Impact Assessments regulations<sup>113</sup> as have others. The IA procedure essentially means that before a legislative proposal of one DG can take root, it has to be considered by the other DGs which assess the impact that it will have on their sector. Greater involvement and dialogue should improve the quality of the subsequent

<sup>108</sup> Smallbusiness/Europe 2004 *EU spring summit joint position paper from leading representatives of the UK SME community*

<sup>109</sup> UEAPME Press release 14.09.2004 *SMEs expect coherent policies from new Commissioners.*

<sup>110</sup> See note 83 UEAPME Press release 19.04.2005

<sup>111</sup> See note 105. Smallbusiness/Europe March 2005

<sup>112</sup> Interviews with Commission Officials: DG ENT

<sup>113</sup> *An Agenda For A Growing Europe: Making the EU Economic System Deliver* the so called Sapir Report; Report for the President of the European Commission, (July, 2003), chairman Sapir, A. Group members; Aghion, P, Bertola, G, Hellwig, M, Pisani-Ferry, J, Rosati, D, Vinals, J, Wallace, H. p.131



legislation and lower the damage that it can cause. One difficulty with the idea is that it seemingly should have been more comprehensive. As it stands the assessment does not assess whether there is any need for the legislation at all, or whether a different approach might be more effective,<sup>114</sup> rather it simply assesses what impact the legislation in its current form will have or might have on certain sectors and so ensures that the DG dealing with these sectors can add an economic component to it. A further point is that the attitude towards Impact Assessments is like that towards legislation in general in the Commission, '... if there is non implementation, then rather than solving this problem they simply introduce new legislation.'<sup>115</sup> There is a forced quality about Impact Assessments which some see as a problem, that they are not the right way to ensure cooperation, 'But trying to force more coordination without inter service cooperation will fail, you cannot dictate it as Prodi has with IA.'<sup>116</sup> There seems to be a danger that the legislation produced will finally be a patchwork product satisfying everyone and no one. But even before this stage can be reached it has to be said that Commission Impact Assessments are not always accepted by the EP and Council, which themselves had seemingly not, at the point of writing, committed themselves to making assessments there is a '... lack of systematic business impact assessments on decisions made by the European Parliament.'<sup>117</sup> By 2005 the Commissioner responsible for competitiveness was still calling for better regulation based on '... thorough impact assessments.'<sup>118</sup> Impact Assessments have been raised as the solution to the legislative burden on SMEs, 'EU institutions should concentrate on effective Impact Assessments to reduce the burden of regulation on businesses,' a senior official in the DG stated.<sup>119</sup> The assessments need to be implemented fully for them to have their intended effect and this is not happening as it should be, '... while Impact Assessments on new legislation are now part of the political rhetoric, there needs to be greater commitment to their implementation...'<sup>120</sup> On the positive side there are signs that legislation is being changed with it becoming more goal based now rather than full of detailed requirements and this suits the NMSs a lot. In practice the MSs (and NMSs) are told that a door must have certain qualities, how this is achieved they can then choose, '... to design the door is their affair.'<sup>121</sup>

Vision appears to replace practical implementation and what is implemented creates problems; reforms and hard steps are seemingly avoided by grand strategies, 'Europe's SMEs currently have the impression, that up until now, the European Institutions are much more successful in the elaboration of strategies and the formulation of objectives than in their implementation. The Lisbon strategy and the Charter were necessary steps towards a comprehensive and coherent economic and social policy. Nevertheless, most of the elements of these newly formulated policies were well known before and the member states, together with the European Commission and the European parliament, stopped short of making concrete decisions for their implementation... Europe's economy does not need new visions or new processes, it needs concrete actions for changing the business environment, the main areas for change the document cites are that the internal market needs to be completed, red tape removed, public services made cheaper for SMEs, labour markets relaxed access to finance improved.'<sup>122</sup> All the SMEs ask for is to be allowed to '... drive Europe's growth and employ-

<sup>114</sup> Interviews with Commission Officials: DG ENT

<sup>115</sup> *ibid*

<sup>116</sup> *ibid*

<sup>117</sup> UEAPME press release 28.04.2004 *Outgoing European Parliament had mixed track record on SME policy says UEAPME*

<sup>118</sup> See note 106 European Voice 7-13 April 2005

<sup>119</sup> *ibid*

<sup>120</sup> UEAPME Press release 15.02.2005 *Proposed revision will dilute small enterprises charter.*

<sup>121</sup> Interviews with Commission Officials: DG ENT

<sup>122</sup> UEAPME paper, *Objectives have to be implemented*, 13.03.2001

ment,' by being given ' . . . a legislative framework that encourages enterprise and innovation' and not the opposite.<sup>123</sup>

SMEs are stated to be and that they will continue to be ' . . . a dominant component of the economic fabric of member states and they are of crucial importance for the processes of convergence of the new member and candidate states,' and the Commission as well as the national governments and other authorities in the MSs ' . . . will continue to have a significant responsibility in determining public policies in this field.'<sup>124</sup> Given their crucial role and the intended role of the Commission in assisting them, it is unfortunate that the Commission has not helped SMEs more, at least in terms of making the policy field easier for them and not legislating problems for this vital sector.

#### 7.4 DG ENTERPRISE AND INDUSTRY MAIN COMPONENTS

Many DGs of the Commission have grown out of task forces set up for a specific purpose, DG ENT is rather different. At the time when President Prodi restructured the Commission there were three separate DGs in existence: DG III, DGXXIII, and DGXIII – DG Innovation Policy. Commissioner Liikanen who took over the new DG ENT was also in charge of DG Information Society. One Directorate from DG XIII was involved in the merger. DG ENT ' . . . was forged largely out of three DGs which were seen to be too duplicative and not sufficiently focused in their responsibilities: Industry; Telecommunications, Information Market, and exploitation of research; and enterprise Policy, Distributive Trades, tourism and Cooperatives.'<sup>125</sup> The aim of the new DG was to promote innovation which was considered a key to modernising the EU economy.<sup>126</sup>

DG ENT is a policy making DG more than just a regulating or paying one, although it is made up of elements which did pay out money, DG XXIII, for example. It is said to enjoy close ties with manufacturers, which led it to take quite different perspectives to DG Environment (from now on DG XI), for example, over car emissions where DG ENT was not surprisingly in favour of a more relaxed approach.<sup>127</sup> As with DGs in general it was 'the main repository of accumulated wisdom and specialised knowledge about EU policy activities,'<sup>128</sup> and thus, logically enough, it can be said to be 'the hub of Policy Networks involving key EU actors, and therefore inevitably influence heavily the direction of political choices.'

The DG and its activities are founded on Treaty Articles: 95 (Internal Market), 152 (Public Health), 157 (Competitiveness) and Title XVIII (Innovation and Research).<sup>129</sup> The DG at 30.06.2004 was managing 282 directives, of this total there were 171 framework directives. The DG was managing 125 decisions and 198 regulations. Thus it was responsible for 805 policy elements. In addition it managed 121 Communications, 20 Recommendations and 29 Resolutions. It was responsible for ' . . . about 30% of all "internal Market" directives, as well as almost half of all the directives concerned with the free movement of industrial goods.'<sup>130</sup> From 1980 up until 1994 the total of policy elements being managed by the com-

<sup>123</sup> See note 105. *Smallbusiness/Europe* March 2005

<sup>124</sup> See note 94 *Ex-post Evaluation of the Observatory of European SMEs, final report*, p.129

<sup>125</sup> Nugent, N. *The Commission's Services* in Shackleton M and Peterson J (ed.) ; *The Institutions of the European Union*, (2002) Oxford, Oxford University Press, p.145

<sup>126</sup> *ibid* p.145

<sup>127</sup> *ibid* p.156

<sup>128</sup> *ibid* p.156

<sup>129</sup> See note 19 *The Enterprise Directorate General Activities and goals, results and future directions* 20.04.2004 p.7

<sup>130</sup> *ibid* p.11



bined DGs which now make up DG ENT was 609<sup>131</sup> thus an increase of 196 policy elements for the period from 1994 to 2004, which would appear fairly modest. In the new DG one part of it dealt with the issues surrounding enterprise and another part with the management of legislation, one final part deals with free movement of goods. Most of the legislation generated was to do with product safety.<sup>132</sup> The DG was completely responsible for three of the chapters in the NMS negotiations: 1, 15, 16, i.e. free movement of goods, industry, SMEs; the ' . . . negotiations for their free movement were very detailed and specialised.'<sup>133</sup>

The amount of national legislation originating in Brussels has been put at 43% in Holland and costing businesses 7 billion euros annually; UK 57% of major bills over last five years implemented EU directives at total cost of 37.8 billion Euros to UK businesses, annually 7.5 billion.<sup>134</sup> Some disagree with these figures but governments were reacting to the high amounts and calling for reductions.

At times as under Vice President Davignon 1984, various DGs with industrial-economic competences have been gathered under the coordination of one Commissioner as happened with DG III and DG Research and Development. Only if this did not generate the synergies required, were mergers then followed through. It should be pointed out that often a single policy field/issue like Biotechnology or even more obviously industrial ones will have several DGs involved and often with problems of coordination if not openly contradicting philosophies; DG Competition (from now on DG IV) and DG III could be found supporting rather different positions on some industrial issues. A breakdown of the elements of the new DG is helpful to understand the accusations made that it is a DG in search of a policy, with confusion about its tasks and that the policy it promotes is vague, nebulous.

DG III, the main party in the merger, was founded in 1967. In fact it absorbed DG Internal Market for the crucial SEA and 1992 project period. As DG Internal Market was involved in planning the harmonising of legislation which was central to the success of the project so the combined DG Internal Market and DG III could be said to have been one of the most important if not the most important DG in the Commission during the 1980s.<sup>135</sup> However in the 1990s the Internal Market DG was recreated and combined with Financial Services. DG III is stated to tend towards being ultra liberal and pro market but less so than DGIV.<sup>136</sup> Its staff are said to have been a 'battalion of economists and legal experts' working in a horizontal DG.<sup>137</sup> At least once in its life the DG is said to have been captured by an industrial group. It had in 1975 an over close relationship with the advertising lobby which resulted in an EC Policy on advertising standards which reflected the interests of the industry. It continued to have a close relationship with the newly named European Advertising Tripartite and this resulted in a problematic Green Paper 'Television without Frontiers'.<sup>138</sup> German officials as well as Commissioners appear to have been dominant in the DG.<sup>139</sup> It had 430 employees in 6 Directorates, 30 units and 14 staff per unit in 1993-5.<sup>140</sup> The DG has been flagged or run by Lux-

<sup>131</sup> Page, E. *The People who run Europe*. (1997) Oxford, Oxford University Press p.105

<sup>132</sup> Interviews with Commission Officials: DG ENT

<sup>133</sup> *ibid*

<sup>134</sup> *European Voice* 28 October - 3 November 2004. McLauchlin, A in *EU red tape tying business up in knots*

<sup>135</sup> Fraser, M. *Television* in (eds) Menon, A and Kassim, H. *The European Union and National Industrial Policy*, London, Routledge (1996) p.213

<sup>136</sup> McGowan, F. *Competition Policy* in (eds) Wallace, H and Wallace, W. *Policy Making in the European Union* fourth edition (2000) Oxford, Oxford University Press p.122

<sup>137</sup> See note 125 Nugent (2002) p.214

<sup>138</sup> *ibid* p.214

<sup>139</sup> *ibid* p.215

<sup>140</sup> See note 131 Page (1997) p.32

embourg Director Generals most of its early history until an Italian took over in 1995.<sup>141</sup> Of its top officials 13 were German, 8 French, 9 Italian in 1993.<sup>142</sup>

DG XXIII started out in 1989 as a task force that became a DG and had 90 establishment staff and 300 supporting staff by 1995.<sup>143</sup> It had had 56 staff members in 1993 in 2 Directorates and 7 units with 8 staff per unit. It came under considerable criticism during the Santer Commission's demise, allegations of corruption and inadequate control by the hierarchy, were no doubt important in its subsequent removal. There was only one Directorate represented the SMEs in the DG ENT. DG XXIII had a history rather akin to that of an ugly duckling that nobody really supported or finally wanted; which is odd given the stated importance of SMEs to the Commission and the Union. The scandal related to the European Year of tourism with the allegations of fraud did not help the DG but it suffered from a bad image for a long time and at one point the Commission failed to find a new head for it in 1997 after the previous one left leading to protests, 'Something is wrong in Europe if no one is prepared to take up this position. This is the department which is supposed to be drawing up EU legislation on small and medium enterprises and who is in charge - nobody.'<sup>144</sup> The Commission also decided to ' . . . shake up its handling of SME issues so that DG XXIII can better coordinate its activities with other departments.'<sup>145</sup> That was evidently still not working as the DG was effectively disbanded two years later. The DG had wanted funding for SMEs to help create jobs and was supported by the UEAPME but DG III opposed it, quite evidently the difference in opinion between the two was not unusual and served to ' . . . highlight again the gaps in thinking . . .',<sup>146</sup>

## 7.5 THE CREATION OF DG ENTERPRISE BY REORGANISATION OF DG III and DG XXIII

The major reorganisation of the Commission which saw two and a half DGs combined into one DG in 2000 saw staff reduced from 1000 to 800 and a large reduction in the number of Heads of Unit and Directors. DG ENT consisted of three main sections: Competitiveness and Industrial policy; Competitiveness and entrepreneurship; Competitiveness, internal market for goods and sectoral policies. There were ten Directorates labelled A-I and R for administrative support and 51 units. There were three units which appeared to deal directly with the needs of SMEs from the 51, the majority were either directly related to industrial sectors like tourism, chemicals and aerospace or to broader more horizontal measures like standardisation, innovation policy and regulatory policy.

Several reasons were given for the reorganization it was ' . . . considered that in the present Commission climate that there were an unacceptable number of middle managers . . . ' so 10-12 middle managers had to go;<sup>147</sup> finally staff were said to have fallen by 30%.<sup>148</sup> Many projects which had been run successfully were dropped and or handed over to other Union organisations like the EIB<sup>149</sup> even though these projects ' . . . were useful, if small, and should

<sup>141</sup> See note 131 Page (1997) p.53

<sup>142</sup> *ibid* p.56

<sup>143</sup> See note 42 Stevens: Stevens (2001) p.168

<sup>144</sup> European Voice Vol.3 No.38. 23.10.1997 Hans Werner Müller, secretary general of UEAPME in *Concern over Commission SME vacancy*.

<sup>145</sup> *ibid*

<sup>146</sup> European Voice 04.07.1996 *SME lobbies put new pressure on Commission for cash to create jobs*.

<sup>147</sup> Interviews with Commission Officials: DG ENT

<sup>148</sup> *ibid*

<sup>149</sup> *ibid*



have been continued; they were being done efficiently . . . <sup>150</sup>The reorganisation project was led by DG III, <sup>151</sup>and it resulted in the DG XXIII being much reduced, and SME policies being seemingly seriously affected, 'the merging of 2000 lost lots of projects and the DG was still confused, multinationals and SMEs all in one DG, SMEs were downgraded hard.'<sup>152</sup>In the current DG 'Multi nationals are very powerful and got an annex included into chemical's directive.'<sup>153</sup>The reorganisation took place before the policy changed and according to some it would have made more sense for the policy to have been changed and the reorganisation to have matched this, since the result was ' . . . lots of mini changes afterwards,'<sup>154</sup>however granted the difficulties of changing a policy in the Commission if the structures supporting it remain intact this was maybe inevitable.

The 2000 reorganisation of the DG was alleged to have been ' . . . an over reaction and excessive,'<sup>155</sup>and seriously affected the DG and its staff and generated several difficulties which were only gradually being resolved. The most obvious physical difficulty was that ' . . . the new DG which was still sited in four different buildings and with different DG cultures as well.' It was said that ' . . . there was a long period of cultural adjustment and administrative procedures which all slowed things down a bit,'<sup>156</sup>and not surprisingly this led to the search ' . . . to find a new culture and they were introspective for a while.'<sup>157</sup>A new official was asked about the administrative culture of the DG and said quite simply ' . . . there is no DG culture.'<sup>158</sup>The atmosphere surrounding the removal of the middle management was difficult and in the aftermath there was a ' . . . high loss of staff that then left the DG.'<sup>159</sup>Projects were stopped and for some there was 'bad disruption.'<sup>160</sup>

The case of fraud in the tourism part of DG XXIII remained a stain on the SME policy area and this was apparently one reason for the restructuring, although it appears pretty belated.<sup>161</sup>This element of alleged 'fear management' by the Prodi Commission was seen as a reason for the reorganisation; the new Commission was determined not to suffer the same fate as its predecessor. The MSs and EP were not to be given any excuse to weaken the Commission any further. Another scandal would provide them with just the excuse they were looking for. The MSs in particular allegedly seemed to have been looking for any opportunity to haul in the Commission, 'the MSs had hoped that Santer would slow things down after Delors had gone too far and fast. They wanted things back to the pre Delors period where the Commission was concerned. But Santer was too weak, Community oriented and European, and failed to rein in some of his Commissioners, he failed the MSs. So the MSs were looking and waiting for an opportunity to drag his Commission down, waiting for a scandal and looking for it.'

The MSs probably knew that the more nervous the Commission was, so the more defensive, and that meant more bureaucratic and slower. In order to survive the Commission had to have, at first, a low profile and to keep to it, 'the Prodi commission from 2000 on was obsessed with survival'.<sup>162</sup>The willingness with which economic concerns and competitiveness were accepted which the MSs wanted showed this, also the SME policy being allowed to be

<sup>150</sup> Interviews with Commission Officials: DG ENT

<sup>151</sup> *ibid*

<sup>152</sup> *ibid*

<sup>153</sup> *ibid*

<sup>154</sup> *ibid*

<sup>155</sup> *ibid*

<sup>156</sup> *ibid*

<sup>157</sup> *ibid*

<sup>158</sup> *ibid*

<sup>159</sup> *ibid*

<sup>160</sup> *ibid*

<sup>161</sup> *ibid*

<sup>162</sup> *ibid*

dropped, whatever the rhetoric (re-nationalisation), was another sign of the Commission being less dynamic and allowing MSs and big industry control over a policy. The Commission was seemingly behaving more like a bureaucracy for the MSs. It also looked more like a bureaucracy internally. It could not afford to give its opponents any more excuses and justifications for re-nationalization of policies or any further weakening of it, 'The EP and Council want more documentation and are looking more into it, there is more political control.'<sup>163</sup> DG ENT changes and the other Commission reforms allowed it to be seen to be doing something about its image and to thus reclaim some credibility and to fend off demands for more changes, more fundamental ones that could affect its freedom.

There was also seemingly consensus that Prodi's Commission wanted to return to 'core' Commission tasks i.e. that of making policy and to drop the running and managing of projects, 'Prodi wanted to stop managing projects and to do policy work and to free up the staff to do this.'<sup>164</sup> Staff were, to an extent, to be subsequently 'freed up'<sup>165</sup> for other projects which was an important goal for the new Commission. The days of Delors were and are to some extent seen as a golden period where lots of policy was made and the Commission was on the up, whereas the Santer period was one of managing lots of projects left over from Delors, another president's projects, and managing cost resources; which could not then be used on glamorous new projects and legislation. Managing the projects of another individual is not apparently considered in certain Commission circles as prestigious as generating something new, you are successful depending on the quality<sup>166</sup> and quantity of legislation you generate and new projects launched. Some officials emphasis the quality others the quantity as the important factor; '... as quality shows the quality of the staff and DG.'<sup>167</sup> Nowadays the generation of legislation is said to be harder but the quality has gone up<sup>168</sup> according to one official, to another it has remained unchanged.<sup>169</sup> Interestingly enough this view pervades the Commission right down to the level of archiving; once a document is written and adopted it is not considered of any value anymore. Not surprisingly the officials accept this logic and apparently no one traditionally cared much about filing or archiving as the Commission valued the new and the innovative and not the old, which is what MSs ministries are said to do, 'The DG is good at being the worst at archiving and filing. ... within the Commission there is a view that an old document is a dead one ... my first Head of Unit had stressed this ... it is seen as a waste of time looking back. In the "evolving of documents" the Commission must and does push on, constantly looking forwards. There are not enough staff anyway to waste on looking back. In national archives there is less evolution and therefore more archiving and it is more important.'<sup>170</sup>

Several other reasons for the reorganisation have been given some were more what one might expect than others. The more usual explanation was that the new Commission required new DGs to match its new priorities; thus for the new Commission the Lisbon objectives and avoiding another case of Commission fraud were top of the agenda, the DG was said to have been reorganised for both these reasons. Another was that '... the policy debate had moved beyond that covered by the previous DGs so the structures had to change to fit the new realities; the old industry title was not useful and this was the same for the MSs (internally).'<sup>171</sup> This explanation i.e. that of the new Commission's new priorities, reflected the

<sup>163</sup> Interviews with Commission Officials: DG AGRI

<sup>164</sup> Interviews with Commission Officials: DG ENT

<sup>165</sup> *ibid*

<sup>166</sup> *ibid*

<sup>167</sup> *ibid*

<sup>168</sup> *ibid*

<sup>169</sup> *ibid*

<sup>170</sup> *ibid*

<sup>171</sup> *ibid*



Prodi's Commission's difficult inheritance of an 'anti-fraud climate' which encouraged them to ' . . . drop fraud risks like directly run projects,' although ' . . . these projects were being done well,' and for some of them ' . . . no one else took them over, so a direct loss took place.'<sup>172</sup>

Less positive explanations range, from new Director Generals are alleged to change the DG to make it match the priority points he or she has set or they change it just to; ' . . . make his hallmark on the DG,' this was said to have been the main reason for the 2000 reorganisation by some.<sup>173</sup> Reorganisations also aimed at personnel moving and so to change policy,<sup>174</sup> a point emphasised by another official ' . . . personnel issues are sorted out via formal reorganisations. The attempt is to use every restructuring to achieve as many personnel goals as possible . . . restructuring is used to remove people and so to change policy . . . (it) has been hard to remove Director Generals and Directors who have political backing. Heads of Unit are moved too much. Feudal rights to positions were a problem and Heads of Unit could not be moved in the old days as the College had to agree on Heads of Units appointments, now this is decided by Director Generals.'<sup>175</sup> This last point shows the extent to which sectoral power increased in the Commission with DG hierarchy apparently deciding on appointments to middle management rather than the College with possibly a more holistic approach. Power play was also mentioned ' . . . the restructure also reflected power play and not just policy rationale.'<sup>176</sup> Creating competences (extra Directors or Heads of Unit) was another reason given.<sup>177</sup>

The end result of the reorganisation was a DG in which large industry and SMEs were forced to be together and this has been stated by some officials as not desirable.<sup>178</sup> This was stated not to be the case in many MSs and that it was odd to have it in the DG. Other anomalies which were not dealt with was that the financial services sector was left with DG Internal Market whereas it should have been in DG ENT, according to modern methods of organisation, but ' . . . the Commission is too old fashioned to get above the old attitude to industry and therefore there is no consistency and rationale.'<sup>179</sup> Other difficulties seemed to be with the DG covering such a wide field and leading to it being ' . . . too general and not specific.'<sup>180</sup> Confusion in the DG was seen as a result of the mixing of the SMEs and DG III.<sup>181</sup> In the DG there was a horizontal approach, 'competitiveness' but sectors were not comparable so this was not useful and putting all the very different sectors into one DG made consistency in policy very hard.<sup>182</sup> One official from another DG described it as follows, 'the Commission is unclear about DG ENT; it is not a spending DG; it is not a legislation making DG, what is it? What is it focused on? Clear tasks mean less reorganisations, the aim of an information society is a vague idea . . . is it thematic or sectoral or what? It must be a more adaptable organisation.'<sup>183</sup> Other officials from other DGs were even more radical in their views about DG ENT, 'DG ENT is expanding to get more staff but why do they exist? What directives are they responsible for? Why not just have DG Internal Market? DG ENT tries to expand into areas just to justify excessive staff. DG ENT has excess staff therefore the creation of the competitiveness strategy took place'.<sup>184</sup>

<sup>172</sup> Interviews with Commission Officials: DG ENT

<sup>173</sup> *ibid*

<sup>174</sup> *ibid*

<sup>175</sup> *ibid*

<sup>176</sup> *ibid*

<sup>177</sup> *ibid*

<sup>178</sup> *ibid*

<sup>179</sup> *ibid*

<sup>180</sup> *ibid*

<sup>181</sup> *ibid*

<sup>182</sup> *ibid*

<sup>183</sup> Interviews with Commission Officials: DG REGIO

<sup>184</sup> Interviews with Commission Officials: DG ENV

The frequency of staff moving around the DG and through it, was criticised by officials, ‘DG ENT changes too often . . . changing contact people constantly . . . Staff are only in DG ENT for 2 years and are unsure about what they are meant to be delivering,’<sup>185</sup> and ‘ . . . the DG has been reorganised too often. Public administration needs stability and continuity. Mobility and restructuring result in lost memory of dossiers etc . . . There is more staff turnover than there used to be and the abuse of the mobility ruling is bad, too many changes too quickly.’<sup>186</sup> High turnover of staff is true of both DG XI and DG ENT, ironically major policy opponents, both of whom have been undergoing major internal changes and lack of coherence of legislation for enterprises, is in part owing to the DGs competition with each other and also their conflicting policy fields. One reason why the first two years of the last Commission were said to have been difficult was due to the Commission being ‘green’ although this then changed.<sup>187</sup>

The reorganisation of 2000 evidently was not the success that had been hoped for in some quarters, and another was carried out as there was in Dec 2004 another restructuring, with the aim to ‘ . . . fit the DG to Lisbon strategy and Commissioner Verheugen’s competitiveness aims and new organisation. The DG now has three pillars and competitiveness is one of these. Now the DG has a very special role in that it is to coordinate the whole Commission in the field of competitiveness now.’<sup>188</sup> The DG was intended to be reorganised to line up with the Lisbon strategy in 2000 but in 2004 the same was being repeated albeit with a heavier emphasis on the competitiveness aspect, presumably because the previous structures had not been successful enough at delivering it.

## 7.6 DG ORGANISATION

Within the DG itself, financial responsibility was apparently passed down the ladder to the lower officials and now Heads of Unit ‘ . . . can sign off accounts.’<sup>189</sup> By some this is seen as positive and an element in decentralising the DG. It keeps staff involved more than in DG AGRI for example.<sup>190</sup> Directors also allegedly gained more power in the decentralisation of the DG and saw their competences increase.<sup>191</sup> The end of the Santer College led allegedly to fear management and excessive procedures. The general idea of the reforms was not questioned by most of the officials but rather the manner in which they were carried out, ‘the principle of the reforms was alright but a very bureaucratic method was chosen. Delegation in the reforms meant passing the burden of proof downwards; it is a ‘monster system’ that no one is happy with.’<sup>192</sup> Ironically the enlargement is leading to a recentralisation ‘ . . . more delegation is needed . . . but (now) there is a recentralising of the Commission taking place to face the 25 MSs and their Commissioners.’<sup>193</sup> One official described the DG as ‘ . . . more centrifugal, and yet more centralising and hierarchical than ever and that . . . there is more and more focus on procedures.’<sup>194</sup> Another stated; ‘The Commission is a political administration and the bigger it

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<sup>185</sup> Interviews with Commission Officials: DG REGIO

<sup>186</sup> Interviews with Commission Officials: DG ENT

<sup>187</sup> *ibid*

<sup>188</sup> *ibid*

<sup>189</sup> *ibid*

<sup>190</sup> *ibid*

<sup>191</sup> *ibid*

<sup>192</sup> *ibid*

<sup>193</sup> *ibid*

<sup>194</sup> *ibid*



gets the more political it gets and the harder to manage.’<sup>195</sup> By political officials usually mean MS influenced.<sup>196</sup>

Another effect of decentralisation on the DG’s internal structure has been in the dramatic increase in the number of staff involved in the horizontal units, those coordinating the DG internally and with the rest of the Commission rather than drawing up legislation. Before the personnel budget was done by 10 people now there is a Directorate of 120.<sup>197</sup> It is hard for the sectoral units to see lots of resources going to the coordinating horizontal units which are perceived by some to create problems rather than solving them. The conflict between the horizontal and the vertical (sectoral units) is in every DG to a greater or lesser extent. The officials in the horizontal units tend to see the problem as not so serious whereas those directly affected by the tasks generated by the horizontal units tend to be less satisfied. The horizontal units are seen as there to serve the vertical ones and even some of the senior management not directly in a sectoral unit stated, ‘the problem is one of too many chiefs in horizontal units. These are constantly increasing. There is a big split between horizontals and verticals which is getting worse over time . . . Inter-service consultations and coordinating departments are ever increasing and this got much worse as a result of decentralisation but for operative units there has been no increase.’ The perception from one sectoral unit was that ‘. . . the rest are constantly trying to “reintegrate” us into DG ENT and so reintegrate the DG,’ this official seemingly held the view that the horizontal units waste time and are overstaffed and irrelevant, and invent tasks for themselves to do.<sup>198</sup> The horizontal units would be expected to be promoting coordination in the DG but this does not seem to always be the case, ‘The people in these (the horizontal units) are anti coordinating and fighting for turf and so you keep cards close to chest . . . There is and was, not enough communication between sector units and horizontals.’<sup>199</sup> When asked about the support that her horizontal unit connected to the enlargement had received from the sectors, another official answered with ‘. . . no comment’ and ‘they were very busy,’ also with aspects of the enlargement.<sup>200</sup> The ratio of sector to horizontal units has changed, there used to be more sector units, there are now more horizontal ones. Now sectorals are said to be getting stronger.<sup>201</sup> The shift of emphasis and staff increments from sector units to horizontal ones seems to show to an extent the DG and the general Commission aim of reintegrating themselves and improving coordination and reducing fragmentation and appearing to be more bureaucratic. The gradual sectoral strengthening again seems to support the notion of the Commission swinging back to being dynamic again. More sector unit staff and sectoral contact means more external contact and chances for integrationary activity whereas horizontal units means more internal activity.

Whatever else both vertical and horizontals have a problematic relationship, and this is reflected in the extremely problematic state of coordination and communication within the DG despite increases in horizontals, ‘DG coordination and communication got worse after 2000 and this is a big problem,’<sup>202</sup> another official said ‘parts of the DG do not know what the other parts are doing, I certainly did not.’<sup>203</sup> In DG ENT the unit to unit communication has got worse. Often the bigger the DG the worse the communication, currently the DG is housed in 2 buildings and not the previous three or four. The problem was also between the higher management and the lower and the staff, ‘There is no communication lower down in the DG and

<sup>195</sup> Interviews with Commission Officials: DG ENT

<sup>196</sup> Interviewss with Commission Officials: DG AGRI

<sup>197</sup> Interviews with Commission Officials: DG ENT

<sup>198</sup> *ibid*

<sup>199</sup> *ibid*

<sup>200</sup> *ibid*

<sup>201</sup> *ibid*

<sup>202</sup> *ibid*

<sup>203</sup> *ibid*

between the political level and the A4s and above.<sup>204</sup> One official expressed the hope that the new competitiveness policy might bring the DG 'closer in his view.'<sup>205</sup> What appears a rather negative situation was seen by over worked officials in some sectoral units rather differently, 'Lack of internal coordination and communication was good for a reduction in interference but isolated the unit. Other units could have been more helpful with staff transfers.'<sup>206</sup>

When there are major issues to be dealt with then none of the normal units are used but rather smaller groups are created, which can mean that things happen more quickly as the numbers of officials are kept small but it also means that the DG as a whole can remain remarkably indifferent to the major issues. This is true unless one unit advertises the issue to the rest ' . . . big policy issues end up in working groups but have little effect on DG lower ranks, so there has been little effect of competitiveness on the DG.'<sup>207</sup> In other DGs the use of smaller groups to achieve major reforms where internal resistance occurred, in DG ENT this does not seem to be the case, or at least none of the interviewees mentioned it.

#### 7. 6.1 STAFF AND MANAGEMENT

Each DG has an individual management style but there are common factors, the Director Generals who head the DGs usually have two characteristics, they are good at policy making and they have political credentials; the Director General of DG III was often of German nationality.<sup>208</sup> Unfortunately, traditionally neither they nor the rest of the management were usually chosen for their ability to manage.<sup>209</sup> They alleged to be powerful, sometimes more powerful than the Commissioners,<sup>210</sup> the following quotation illustrates this well:

'In an interview with German daily Sueddeutsche Zeitung, the German commissioner in charge of the important industry portfolio said "the whole development in the last ten years has brought the civil servants such power that in the meantime the most important political task of the 25 commissioners is controlling this apparatus . . . There is a permanent power struggle between commissioners and high ranking bureaucrats. Some of them think: the commissioner is gone after five years and so is just a house keeper, but I'm sticking around, he continued . . . Illustrating how power struggles happen, the commissioner said it all occurs "under the surface." The commissioners have to take extreme care that important questions are decided in their weekly meeting, and not decided by the civil servants among themselves.'<sup>211</sup>

This somehow combines with their political connections and is explained by their having to 'lead'<sup>212</sup> and also their being closer to power. In general this group has gained from the decentralisation which allows them greater independence but gradually also more responsibility. In DG ENT the relationship between the Commissioner and the Director General seems to have been easier than in some DGs and staff stated that they were not tempted to circumvent the hierarchy by going to the Cabinet or the Commissioner.<sup>213</sup> The nationality of the Director General and their desire for a career are important factors in whether they want to 'do big industry' i.e. work closely and promote the interests of companies, in these cases then they ex-

<sup>204</sup> Interviews with Commission Officials: DG ENT

<sup>205</sup> *ibid*

<sup>206</sup> *ibid*

<sup>207</sup> *ibid*

<sup>208</sup> *ibid*

<sup>209</sup> *ibid*

<sup>210</sup> The Economist, Charlemagne, November 19 2005

<sup>211</sup> Mahony, H 'Commission bureaucrats are getting too powerful, says Verheugen' EU Observer 05.10.2006

<sup>212</sup> Interviews with Commission Officials: DG ENT

<sup>213</sup> *ibid*



pect to be closely informed of everything that occurs with the companies whilst seemingly not themselves doing the same for the staff who might also be involved with the dossier.<sup>214</sup> The Directors were alleged to also be 'political animals'<sup>215</sup> and that Delors increased the political influence of the Commission over them and their appointment, but since the end of the Delors Commission MSs began to re-extend their influence over Directors.<sup>216</sup>

Heads of Unit are the work horses of the Commission and DG ENT has been no exception. They have allegedly seen a dramatic increase in their tasks owing to the reforms as well as the enlargement, 'The reforms have made things harder for enlargement, particularly for the Heads of Unit who have to manage their staff in this way as an extra to their previous tasks,'<sup>217</sup> and 'in the past people structured units to make themselves look good, giving presentations etc and were not concerned about management. Now they have to cover their policy area and the planning, assessment reforms and lots of extra tasks.'<sup>218</sup> Heads of Unit are expected to '... marry the political requirements of the hierarchy to the technical contents of the dossiers.'<sup>219</sup> They are the experts and possess the institutional memory the DG needs to function, they are also good at strategy and are able usually to find ways around problematic hierarchy blockages by hiding files from them or by creating 'momentum outside the DG for their projects.'<sup>220</sup> As is so often the case in the Commission when staff avoid the hierarchy or excessive bureaucratic procedures, it is done not for personal gain but to get a policy done properly or to rescue what should be rescued.<sup>221</sup> In practice the DG makes management plans but these are often dictated to from below, from the policies which the staff have been encouraged to develop normally on behalf of MSs or stakeholders.<sup>222</sup> The Heads of Unit then '... make the work plan (of the DG) fit around what they ... want to do.'<sup>223</sup> Major issues are dealt with at the top ranks or by working groups; '... but for the rest ...' Heads of Unit in the DG as in the other DGs perceive of themselves as the experts with the right instincts and they follow them.<sup>224</sup> The top hierarchy are then said to 'take the axe' to the policies which they do not want although some do get through.<sup>225</sup> The DG plans are alleged to be to 'force mobility' on the Heads of Unit which will weaken the Commission vis-à-vis Council and MSs.<sup>226</sup> This use of mobility resulted in a situation where 'there were lots of management changes in the DG every 1 and a half to 2 years they changed.'<sup>227</sup> The reforms and in particular how they affected the Heads of Unit allegedly added to the weakness of the DG at the beginning of the Prodi Commission '... which led to loss of continuity; therefore at the beginning of reforms the DG had problems finding its way.'<sup>228</sup>

Desk Officers are apparently the main policy makers of the DG and, as was stated above, management plans which seem to show policy dictated from above are, in fact, not very accurate as policy is developed 'bottom up and management plans are made to fit what originates from below.'<sup>229</sup> The relationship between Heads of Unit and officials is stated to not be a prob-

<sup>214</sup> Interviews with Commission Officials: DG ENT

<sup>215</sup> *ibid*

<sup>216</sup> *ibid*

<sup>217</sup> *ibid*

<sup>218</sup> *ibid*

<sup>219</sup> *ibid*

<sup>220</sup> *ibid*

<sup>221</sup> *ibid*

<sup>222</sup> *ibid*

<sup>223</sup> *ibid*

<sup>224</sup> *ibid*

<sup>225</sup> *ibid*

<sup>226</sup> *ibid*

<sup>227</sup> *ibid*

<sup>228</sup> *ibid*

<sup>229</sup> *ibid*

lem, but allegedly between officials and the Directors there is 'little contact' and 'this could be improved.'<sup>230</sup> The officials are allegedly regularly scrutinised by the Cabinets and Commissioners which carry out, 'talent spotting.'<sup>231</sup> The apparently relationship on REACH between the Desk Officers and the Commissioner was quite close and certainly informal and this created problems with some in the top hierarchy, 'the Commissioner was very open and phoned up Desk Officers. Some in the DG found this threatening. The hierarchy like to have their positions confirmed by being asked first.'<sup>232</sup> Desk Officers are useful for Commissioners to have on their side as they are in the 'services' system and can further the Commissioner's goals with their knowledge and skills.

Archiving is as problematic in the DG as in the rest of the Commission '... the archives are not wonderful in DG ENT, with ad hoc filing. Often files are filled with every odd bit of info and it is impossible to find relevant information. There is a process of sending files to central archives that may have a better system.'<sup>233</sup> The dislike of filing as a result of it not being an innovative task was mentioned earlier. Public pressure appears to be changing attitudes at least, which may lead to changes in the archives themselves, '... as a result of the reform allowing the public the right of access to information with "policy available on request rules"'<sup>234</sup> and '... there has been a reform forced on the DG in terms of its archives; they are forced to have new rational archives.'<sup>235</sup> From an outsider's point of view it seems that useful internal reforms were forced on Commission from the external world, like the creation of the anti fraud agency OLAF, greater use of impact assessments, the Kinnock reforms and better archiving. The Commission, in its desire to race ahead of itself and its supply lines is always in danger of overreach and the absence of any backup. However there is resistance in the DG and Commission to reforms which are perceived by some as controls on their Treaty given rights.

#### 7.6.2 UNIT LEVEL

Most units in the DG are normally 15-20 strong; this figure being a basic as there is '... little sense in small ones,' as each unit must have a secretary.<sup>236</sup> Units are very enterprising in the DG much along the lines of most of the Commission with highly trained and able staff excelling themselves in innovation. A good example of this was the enlargement unit. It was given the task to prepare the DG for the enlargement. The unit saw the creation of the charter for small enterprises as '... a political opportunity for the unit, they managed to get this charter extended to NMSs, it did not involve legislation and was voluntary and action programme, NMSs agreed to sign, a coup for DG.'<sup>237</sup> A common declaration was signed in Slovenia which the NMSs had been persuaded by the unit to decide on as they were told '... it was good for them and would help them to work with the DG.'<sup>238</sup> Resources were not made immediately available which meant that the unit '... had to fight for them,' and '... use arguments to make enlargement an issue. In 2000 enlargement seemed far away.'<sup>239</sup> The Director General allegedly had to be gradually brought around to supporting the enlargement which he was not at the beginning, finally the unit had enough resources.<sup>240</sup> The Director General was present at

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<sup>230</sup> Interviews with Commission Officials: DG ENT

<sup>231</sup> *ibid*

<sup>232</sup> *ibid*

<sup>233</sup> *ibid*

<sup>234</sup> *ibid*

<sup>235</sup> *ibid*

<sup>236</sup> *ibid*

<sup>237</sup> *ibid*

<sup>238</sup> *ibid*

<sup>239</sup> *ibid*

<sup>240</sup> *ibid*



the signing and as a result became personally involved in the enlargement; this was vital for the unit and also for the enlargement as it served as an advertisement for the process and the work of the unit, ' . . . the unit had persuaded other units to follow them and in the management plan enlargement was clearly on all units' agendas.'<sup>241</sup>The next Director General was apparently more ready than the previous one for the enlargement and supported the unit in its next strategic move. A network within the DG was created with the purpose of keeping the other units ' . . . fully involved . . . fully informed . . . '<sup>242</sup>Individuals from each unit were given the task of concentrating on enlargement and enabled 'awareness of enlargement issues,' to be extended.<sup>243</sup>Finally ' . . . too many people were involved in the network for it to be effective so information notes were used instead.'<sup>244</sup>The unit ' . . . went beyond what the Commission was doing; the unit's policy was to perceive the NMSs as MSs and this "built awareness."<sup>245</sup>In common with the enlargement units throughout the Commission 'open programmes' were run to show the NMSs ' . . . how to behave in the Commission; an endogenous approach and not an exogenous one.'<sup>246</sup>

The unit as a legislation generating organ has changed as well, although some say that ' . . . there is a similar amount of time spent on legislation generation as in the past.'<sup>247</sup>In sectorals the real legislation was done by the specialists which in DG ENT means engineers who deal with the details and specifications which make up the bulk of the finally document, however ' . . . over time there are less technical elements in legislation than there used to be; no minister understands what is in the legislation as it is so technical.'<sup>248</sup>The move is therefore allegedly in the direction of out sourcing the 'technical content' and details to be completed by 'external institutes' the legislation drawn up by the DG has got less technical as a result and 'the quality of the legislation has improved.'<sup>249</sup>To an extent this is a move away from the technocratic expertise of the Commission which was able to outmanoeuvre MSs owing to its mastery of technical details. Now the MSs will have equal access possibilities to external institutions and could control the details more as a result.

The tasks of the DGs units are changing and whilst it has to be said that different units have quite different institutional partners and tasks, so it is hard to generalise, it is possible to say that units are involved with more partners than before, that their work involves more bureaucratic procedures than before and that policy making pure, is becoming somewhat less and also more difficult, to perform. Contact with other European institutions is seemingly increasing steadily, for one unit which is neither totally horizontal or vertical it has recently seen a '10-20% increase,'<sup>250</sup> in time spent working with the Council. This is partly to do with subsidiarity which means the officials; ' . . . must analyse national legislation more and check compliance.'<sup>251</sup>The arrival of the NMSs saw the same increase in work since they became full members.<sup>252</sup>The way that the Council relates to the unit has evolved as well, 'QMV makes it easier to work with them (the Council) but with 25 members now it is much more complicated and harder to keep all the MSs following on one thread. It is hard to keep legislation on track and national delegations are more important than before. There has been a real slow

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<sup>241</sup> Interviews with Commission Officials: DG ENT

<sup>242</sup> *ibid*

<sup>243</sup> *ibid*

<sup>244</sup> *ibid*

<sup>245</sup> *ibid*

<sup>246</sup> *ibid*

<sup>247</sup> *ibid*

<sup>248</sup> *ibid*

<sup>249</sup> *ibid*

<sup>250</sup> *ibid*

<sup>251</sup> *ibid*

<sup>252</sup> *ibid*

down as a result and comments have been made.<sup>253</sup> Yet the legislation is still being produced even though the Council appears to be slowing down to an extent; this is owing to the Commission's alleged skill in using alternative methods of organising the proceedings to ensure agreements can be made, 'The Commission tries to use "backseat chairing" techniques; chairing skills are more important than ever.'<sup>254</sup>

But it is with the EP that the unit mentioned above has seen its biggest increase in work, 40-50% more contact with it owing to the increase in the Co-decision making procedure and concerns about the democratic deficit.<sup>255</sup> The DG as a whole has seen an increase of 20-25% more interaction with the EP and MEPs questions.<sup>256</sup> Some officials state that they now have '... to take the parliament seriously,' unlike before, 'under unanimity the unit put its effort into the Council, under Co-decision they have to take the EP seriously. Before only 5 MEPs were involved and the unit helped the rapporteur write their report. Now they must work with maybe up to 100 MEPs in a committee. They must work more with MEPs ... interaction with the EP ... has intensified and the MEPs comments have to be taken seriously.'<sup>257</sup> His unit has drawn up a plan for the next five years aimed at getting more staff to deal with the EP.<sup>258</sup>

## 7.7 DG ENT ADVOCACY COALITIONS - POLICY NETWORKS

Within the broader field of the internal market there are stated to be '... Policy Networks galore,'<sup>259</sup> and many of these relate to the narrower industrial policy sector. Some like the pharmaceutical one are very influential and powerful; the so called ERT, or European Round Table, in which top industrialists sit to advise the Commission is likewise powerful in a broader manner. Others, like that for the aviation industry are weaker and more 'issue networks.' The DG itself states that it needs '... close dialogue with the social partners in the various sectors (for example, textile and clothing, footwear, chemicals, steel, business related services and tourism),' and that the dialogue '... is therefore essential in securing support and understanding for Community problems. Such specialist knowledge can be of particular value when dealing with specific problems. ...' It is also vital in gaining the DG '... expert knowledge of the economic reality of the most important sectors (industry and services);' and of their 'evolution, needs and concerns.' To assist the sectors in these the Commission; '... must keep abreast ...'<sup>260</sup> There is a fine line between a close dialogue and more problematic relationships.

Many internal market decisions taken after 1987 were made by a '... closed circle of ministers, officials and Policy Networks';<sup>261</sup> the subsequent 1992 project was so vast and fast that many national Policy Networks were unable to protect themselves and their interests<sup>262</sup> and were forced to struggle and race to establish themselves in Brussels, several of whom '... feared that a "Policy Network detrimental to their interests was hardening."<sup>263</sup> Not being present in Brussels at the formulation stage of policy '... carried higher potential costs after the

<sup>253</sup> Interviews with Commission Officials: DG ENT

<sup>254</sup> *ibid*

<sup>255</sup> *ibid*

<sup>256</sup> *ibid*

<sup>257</sup> *ibid*

<sup>258</sup> *ibid*

<sup>259</sup> See note 103 Peterson; Bomberg (1999) p.80

<sup>260</sup> See note 19 The Enterprise Directorate General *Activities and goals, results and future directions* 20.04.2004 p.10

<sup>261</sup> See note 103 Peterson; Bomberg (1999) p.89

<sup>262</sup> *ibid* p.81

<sup>263</sup> *ibid* p.85



mid-1980s,' the frequent use of Qualified Majority voting also forced MSs to lobby widely to stop proposals.<sup>264</sup> It is also likely that the MSs preferred to stop a proposal within the Commission rather than when it arrived in the Council, opposition at the later stage carries more political costs. The 1992 project also saw a large increase in experts being used by all parties including the Commission to allow them to continue to function despite the vast increase in legislative activity. This resulted in '... overlapping groups of consultants,' who '... worked for the Commission, member governments and firms ... the conventional delineation between public policy makers and private influencers became blurred.'<sup>265</sup> The haste combined with all the above resulted in 'important decisions' being taken by Policy Networks.<sup>266</sup> In the later 1990s the Policy Networks 'stabilised' although with the extension of the Co-Decision procedure the EP has become more involved and as the procedure is far from speedy informal decision making has increased and so the importance of the Policy Networks as '... arenas for informal bargaining,' and 'backroom bargaining.'<sup>267</sup> The Policy Networks are vital also for the implementation of the Union's decisions<sup>268</sup> and will also be able to use this expertise to influence decisions taken centrally.

In the field of research and development and information technology, the Commission is stated as having taken 'an active interventionist view' during the 1980s particularly amongst the top levels of the Community. The Commission used an advocacy coalition with big business to push national governments to back up its new approach. An advocacy network existed in the Commission's drive for competitiveness with a Commission big-business relationship at its heart, or 'partnership' as it has been called. The kind of network described here is said to be that of Sabatier, who described a network consisting of the following '... people from various governmental and private organisations who share a set of normative and causal beliefs and who often act in concert. At any particular point in time, each coalition adopts a strategy envisaging one or more institutional innovation that members feel will further policy objectives.'<sup>269</sup> A closer definition arrives at the following that coalitions have "'... shared normative beliefs'" generally consist of policy goals; the advocacy coalition's intention is to manipulate legislation, public expenditure, personnel concentration and so forth, so as to attain mutual policy objectives over a period of time; this strategy encapsulates the purposeful opportunism of the Commission in the realm of industrial policy ... '<sup>270</sup> The existence of this advocacy coalition is attested to by various authors, one of whom, Ross, states that the major electronics firms pressurised the Commission to produce the Community policies for electronics that in fact later emerged, stating that business leaders would lose faith in the Community if they were not helped during a period of intense competition from outside the Community.<sup>271</sup>

The Commission for its part, is said to have seen European high tech companies as allies in creating a federal Europe. It should be stressed here, that the Commission values the big companies for their expertise and economic and thus political clout, which give it more power in the face of MS reluctance to support greater Commission presence in the Industrial Policy area. But some MSs are said to be part of this coalition along with the EP and some smaller '... like minded private interest groupings.'<sup>272</sup> In particular in the telecommunications sector the Commission is said to have been remarkably successful and '... it succeeded in "mobilising a network of supporters not only at the European but also at the domestic levels" whilst "neu-

<sup>264</sup> See note 103 Peterson; Bomberg (1999) p.85

<sup>265</sup> *ibid* p.142

<sup>266</sup> *ibid* p.85

<sup>267</sup> *ibid* p.91

<sup>268</sup> *ibid* p.88

<sup>269</sup> See note 11 Lawton, (2000) p.139 referring to Sabatier (1993) p.18

<sup>270</sup> *ibid*

<sup>271</sup> *ibid* p.140 referring to Ross (1993) p.20-43

<sup>272</sup> *ibid* p.139

tralisising" the stiff opposition of several member states . . . <sup>273</sup>The goals of these networks and the Commission seem positive ' . . . it has acted with foresight and considerable boldness in pushing liberalisation on unwilling Member States.'<sup>274</sup>The Commission's efforts resulted in ' . . . an EU telecom's Policy Network,' which was vital and compensated for the lack of ' . . . hierarchical decision making . . . in a sector marked by widely-dispersed power.'<sup>275</sup>In particular in this sector and that of technology in general it can be said that:

' . . . some tasks however while equally highly technical and demanding a sound mastery of procedures and policy instruments, arise from the more technocratic mode of policy formation. The officials have no monopoly of agenda setting in such circumstances, but they have an important influence upon it and there is markedly more scope for them to define the problem and undertake the choice of the solution; examples of such policy making include the development of policy for industrial support and information technology, and indeed technology policy in general. Political control in such areas is difficult. In technology policy, for example, assessing and directing policy requires the political leadership to make judgements on complex and rapidly changing technical issues. In some circumstances control is exercised, but frequently "Policy Networks of like minded actors, often organised and led by the Commission, have considerable scope to set the agenda and influence outcomes." In general as Laura Cram has demonstrated, the Commission and its staff have 'proven to be remarkably adaptable.'<sup>276</sup>

And yet despite the Commission's success in the creation of the European technology policy, this has not had the overall positive effect that might have been expected; rather the European technology as is linked to R and D policy has been described as ' . . . producer rather than user driven.'<sup>277</sup>It is stated to have ' . . . had little or no positive effect on European firms' market position, because it failed to address the real cause of Europe's competitive difficulties.'<sup>278</sup>These were not to do with a much discussed 'technology gap' but rather a problem in ' . . . the marketing, commercialisation, and adaptation of technology.'<sup>279</sup>Thus, ' . . . whatever its political benefits European collaborative R and D Policy has not been an industrial success.'<sup>280</sup>It was only in the 1990s that the EU began to focus on user needs, rather than 'improving technology,' which it should have done before, 'The EU should support areas in which there is obvious market demand, rather than those in which the Commission perceives the need for a supply.'<sup>281</sup>In 1996 the EU in the Commission's 1996 action plan first showed a ' . . . tangible attempt . . . to refocus its technology policy and address these problems.'<sup>282</sup>There is a real danger according to some that the EU might continue to support or ' . . .favour the largest European Companies or any protectionist trade tools which are aimed at fostering infant firms or reducing the impact of international competition on European firms, should be abandoned, rapidly and completely.'<sup>283</sup>Although with regards to the EC technology policy the Community is said to be leaving the more dirigiste 1980s and moving into the more liberal 1990s with a move from backing ' . . . uncompetitive multinational companies to promoting enterprising SMEs.'<sup>284</sup>Whilst this could be argued to be an improvement depending on the economic per-

<sup>273</sup> See note 103 Peterson; Bomberg (1999) p.221 discussing and quoting Schneider et al (1994) p.494

<sup>274</sup> *ibid* p.227

<sup>275</sup> *ibid* p.221 discussing and quoting Schneider et al (1994) p.494

<sup>276</sup> See note 42 Stevens: Stevens (2001) p.223

<sup>277</sup> See note 33 Lawton, (1999) p.43 referring to Zysman (1993)

<sup>278</sup> *ibid* p.42 referring to Woods (1987) p.90

<sup>279</sup> *ibid*

<sup>280</sup> *ibid*

<sup>281</sup> *ibid*

<sup>282</sup> *ibid* p.43

<sup>283</sup> *ibid* p.44

<sup>284</sup> *ibid* p.45



spective chosen, the Commission is still choosing and supporting companies, a method which was supposed to belong to a bygone era and secondly, it reveals a greater danger that the powerful multinational companies with the ear of many in the Commission<sup>285</sup> and members of strong Advocacy coalitions will be opposed to SMEs, which have little to directly offer the Commission as actors with economic and political clout.<sup>286</sup>

In the field of biotechnology there has been the gradual creation of Policy Networks in the mid-1990s. The industry seems to be more represented in Brussels than in MSs owing to its development alongside the internal market, and yet despite this two industry organisations developed which have been ‘hostile’ to each other for years and mutually refuse to attend meetings in which the other is present. One organisation the SAGB represents the major large players and was close to DG III, the other the ESNBA was close to DG XI and focused on smaller players and in particular those with greener methods of production.<sup>287</sup> Something similar happened with the revival of the debate surrounding the 1973 chocolate directive. Commissioner Bangemann, for DG III, seemingly favouring large companies which wanted to be able to use differing proportions of vegetable fat and thus produce a less pure chocolate product. The smaller companies, in particular those specialising in pure chocolate fought back stressing that Europe and those in the institutions responsible, were favouring multinationals.<sup>288</sup> These splits between large and small players and the difficulties of dealing with both with their seemingly different needs and agendas runs through the recent history of DG ENT.

The Pharmaceutical industry enjoys and enjoyed a close relationship with the Commission and in particular ‘close ties’<sup>289</sup> with DG III, and together form ‘... a policy community with muscle.’<sup>290</sup> The EPIA (European Federation of Pharmaceutical Industry Associations) is ‘... one of the most powerful, well-resourced and single-minded industrial lobbyists in Brussels. Formed in 1978, it defused the threat of transnational regulation ... by the EU.’<sup>291</sup> Several times it has, owing to its organisational skills, succeeded in ‘... talking the Commission out of proposing new regulations.’<sup>292</sup> Whilst the industry does not always win, a lot of the time it does, and maybe its greatest success was when it managed to gain the Commission’s approval on a ‘... self regulatory code of practice on medicine selling.’ Furthermore it managed to talk the Commission around into not introducing a pricing directive when it ‘... persuaded the Commission that it should be more concerned about the overall health of the industry than with its prices.’<sup>293</sup> Thus the industry and the EPIA are ‘... at the centre of a tightly-integrated policy community which keeps a tight grip on the policy agenda.’<sup>294</sup>

## 7.8 MS AND INDUSTRY CAPTURE OF THE DG

The Commission as a whole has been alleged to be at risk of ‘capture’<sup>295</sup> for several reasons. As a relatively small organisation it needs external expertise in order to function effectively, in particular, producer groups can provide this and they are also crucial to ensure that the laws

<sup>285</sup> See note 33 Lawton, (1999) p.43 referring to Zysman (1993) p.42

<sup>286</sup> *ibid* p.45

<sup>287</sup> See note 103 Peterson; Bomberg (1999) p.220-221

<sup>288</sup> *ibid* p.86-87

<sup>289</sup> *ibid* p.80

<sup>290</sup> *ibid* p.84

<sup>291</sup> *ibid*

<sup>292</sup> *ibid*

<sup>293</sup> *ibid*

<sup>294</sup> *ibid* p.80

<sup>295</sup> Young, A and Wallace, H. *Regulatory politics in the enlarging European Union*. (2000) Manchester, Manchester University Press p.6-7

generated will be effective and meaningful to the producers as well as the Union. Naturally producers have an interest in ensuring that their needs are taken into consideration and where possible directing the regulations along paths beneficial to themselves. The founding treaties, which were drafted during a period when elements of 'corporatism' were still popular, conceived of producers as being in an important and special position in the integration process and also being, in a sense, partners with the Commission in furthering integration, '... the integration process was predicated upon technocracy and elitism.'<sup>296</sup> This approach was intended to provide space for '... a combination of benevolent technocrats and interest-propelled economic groups to build transnational coalitions in support of European policies.'<sup>297</sup> The need for the Commission to convince key economic elites that their self-interests lay in supporting integration, gave business interests a privileged position and contributed to '... a lack of balance between public interest and private interests.'<sup>298</sup> The Commission is stated as lacking accountability.<sup>299</sup> Whilst the authors of the above stress that the final regulatory product does not appear to reflect producer capture of the Commission,<sup>300</sup> this has not always been the case and it does not exclude individual DG capture. The saving grace of the Commission has at times, been its decentralised structure which can be or seem at the very least to be anarchic, but it means that it is unlikely that any one group can totally capture over time a range of DGs which are intermeshed in very different sectors and have very different interests that they defend. In particular the environmental perspective and the power of DG XI and the environmental lobby<sup>301</sup> within the Commission as a whole, reduced the possibility of industry dominating the Commission completely. The automobile industry and DG III are declared to have seen their influence in the emission's policy decline at the same time as DG XI's influence grew, indicating a linkage between the two.<sup>302</sup>

The stated pharmaceutical directive which DG III drafted, owed an initially consumer-friendly face to the fact that the official drafting it had been brought in from the European Consumer's organisation to draft it, during a period when the consumers' consultative council was particularly influential.<sup>303</sup> Subsequent protests from the industry and MSs led to a moderation of the proposals by the DG. The DG acted belatedly once it realised the detrimental effects the proposed directives would have to industry, after industry and MSs reacted negatively. Elements of the DG were quite possibly unaware of the full implications of what the drafted-in-official had written and only acted after the event. The existence of networks often with Commission officials close to their centre are known to exist in other sectors<sup>304</sup> and a network or advocacy alliance(s) existed in the pharmaceutical field.<sup>305</sup> It seems likely that officials in part of DG realised what had happened with the new official and activated opposition to the proposal in the Commission, other MSs and the industry; indeed the speed with which the Commission as a whole backed off is indicative of internal divisions.<sup>306</sup>

MS capture of a policy is to the detriment of other businesses and interest groups as well as MSs. There would appear to be an inherent danger for DGs and in particular industry ones of getting too close to their main sources of information and support big business and key MSs.

<sup>296</sup> See note 295 Young; Wallace (2000) p.7 referring to Featherstone. K. (1994), *Jean Monnet and the "Democratic deficit" in the European Union*,

<sup>297</sup> See note 295 Young; Wallace (2000) p.7,

<sup>298</sup> *ibid* p.7

<sup>299</sup> *ibid* p.7

<sup>300</sup> *ibid* p.9

<sup>301</sup> *ibid* p.36

<sup>302</sup> *ibid* p.36-37

<sup>303</sup> *ibid* p.86-87

<sup>304</sup> See DG AGRI chapter

<sup>305</sup> See note 293 Young; Wallace (2000) p.84-85

<sup>306</sup> *ibid* p.88



The most infamous example of known capture of the policy by big business is that of DG III officials, who were said to have been so close to the advertising industry in 1975 that the EC policy on advertising standards is said to have ‘ . . . ended up reflecting the interests of the advertising industry.’<sup>307</sup> Far from learning from their error the DG seemed to have learnt the opposite message and when they began to work on a television policy, the advertising lobby was again involved. For the Commission with its neo-functionist policy in this area<sup>308</sup> the advertising industry is said to have seemed to be an ideal partner.<sup>309</sup> The green paper entitled ‘Television without frontiers’ of 1984 created some loud protests. Many interest groups saw it as being too pro market ‘ . . . others frankly observed that the Commission had been captured by the advertising lobby.’<sup>310</sup> Under pressure from another lobby, that of the public broadcasters, the paper was revised and became more protectionist in 1986.<sup>311</sup> The example of high density television HDTV is an example of the EC being used if not captured by national interests, in this case France, ‘The difficulties of separating EC regulation from national decisions and the attempts to use the EC . . .’<sup>312</sup> DG XIII was the Commission institution most involved in the HDTV case. The French government and France Telecom shared a common strategy and France ‘ . . . appeared to be able to continue “grands projects,” albeit at the European level.’<sup>313</sup> The German government was placed under pressure to ignore the market and its own national interests by the French and reluctantly agreed in 1990. The Commission as a whole and DG XIII in particular are stated to have ‘ . . . showed an alarming disdain for the interests of the consumer.’<sup>314</sup> Finally though, the MAC norm which was involved in the HDTV case was dropped in the 1990s despite French intensive lobbying and vast expenditure by the Commission.<sup>315</sup> All in all the HDTV project was a classic example of ‘ . . . a range of national and EU protagonists’ who ‘ . . . refused to shut off the spigots of effort and money even after it was clear that the project would fail.’<sup>316</sup> Granted that similar behaviour is seen in a range of EU policies and the presence of a collection of determined actors, it is fair to call this a case of Policy Network resistance to either the change or modification of a policy-project, whether or not the EU as whole would suffer as a result. Part of the solution was the reorganisation and taking apart of the problematic elements of the Commission end of the Policy Network. In the resultant fall out, DG III ‘ . . . dismantled parts of DG XIII,’ and took them over and Bangemann, the Commissioner for Industry for the majority of the 1990s (who preferred to; ‘ . . . promote structural adjustment’ and ‘ . . . horizontal measures’ rather than supporting ‘ . . . industry specific ones,’)<sup>317</sup> ‘ . . . played down’ any future ‘grand projects’.<sup>318</sup> The Steel industry is said to provide an example of capture, this time by more than one MS. The French and Germans are said to have used their power and presence in Commission DGs to handicap the Italian steel industry by rejecting Italian plans for restructuring and demanding ones very much in the favour of the German steel industry.<sup>319</sup>

National Splits within the Commission are also important particularly as the Commission is intended to operate free of national political positions. Where decisions are of high national

<sup>307</sup> See note 125 Nugent (2002) p.214 referring to Mattelart and Palmer (1991) p. 535-56

<sup>308</sup> *ibid* p.204

<sup>309</sup> *ibid* p.214

<sup>310</sup> *ibid* p.215 referring to Guillou (1988) p.65

<sup>311</sup> *ibid* p.215 referring to Noam (1991) p.291

<sup>312</sup> Thatcher, M. *High Technology* in (eds) Menon, A and Kassim, H. *The European Union and National Industrial Policy*, London, Routledge (1996) p.191

<sup>313</sup> *ibid* p.192

<sup>314</sup> See note 103 Peterson; Bomberg (1999) p.211

<sup>315</sup> See note 312 Thatcher (1996) p.200

<sup>316</sup> See note 103 Peterson; Bomberg (1999) p.211 discussing and quoting Janis (1982)

<sup>317</sup> *ibid* p.202

<sup>318</sup> *ibid* p.211

<sup>319</sup> Masi, A. *Steel* in (eds) Menon, A and Kassim, H. *The European Union and National Industrial Policy*, London, Routledge (1996) p.78 and 79

importance then the Commissioners are said to ‘ . . . rarely, if ever, vote against the position of their nation state.’<sup>320</sup> An example of this was the textile company Boussac which had severe problems; both Delors and Claude Cheysson abstained from the voting with regard to the company repaying aid received. A further example included the Greek Commissioner Christos Papoutsis, blocking the Commission taking Greece to court ‘ . . . for an illegal ban on toy advertisements.’<sup>321</sup>

The growing problems with the economy in Europe led to an increasing importance for industry and so the DG, ‘The need of the Commission to listen to industry has strengthened DG ENT.’<sup>322</sup> Discussions with officials revealed some indications of networks: ‘In the 1980s there were French groups in DG there are less now, but there are groups in specialised areas. . . .’<sup>323</sup> Various reforms of the Commission are alleged to be also aimed at reducing the dangers of some relationships ‘Mobility is an attempt to remove feudal control over positions. In one unit in the DG there are people who have been there for ages and have clear loyalties (industry implied).’<sup>324</sup> It is the MSs though, which are increasingly coming under pressure domestically to improve the economic climate, which seem to be apparently at the forefront of wanting to direct the DG and they have several methods of doing so some of which have been mentioned like the using of seconded officials. Seconded officials from national ministries are apparently ‘parachuted in’ to the DG to get a certain policy put into place or to block one that has already started. Since personnel are the deciding matter in the Commission as to how a policy will turn out, changing personnel from outside makes sense as a means of directing policy inside the DG. Once a seconded official is inside a DG then they enjoy the freedom that officials have within the Commission to generate policy often with little limitations from the hierarchy unless the policy is over political. The MSs are said to have; ‘ . . . placed seconded officials in DG XI to make it environmentally active.’<sup>325</sup> Within DG ENT a Dutch seconded official was alleged to have been manoeuvred into position since ‘ . . . industry and banking knew the Commission was preparing a directive on mortgages.’<sup>326</sup> The official wanted to ‘ . . . stop the directive and the see the articles reduced from 75 to 14.’ However when he was given a free hand to make the directive so long as it worked, he finally wanted 125 articles to get the job done.’<sup>327</sup> In general ‘MS Governments have (are included in) external and internal networks to influence Commissioners; lobbies are also states and cities like Frankfurt which lobby at all levels and have very different needs from small cities,’<sup>328</sup> and ‘The German government wanted to head the DG from Brussels . . . There is (now) a DG ENT committee which MSs are on which is required to give assent before money can be spent, the MSs are powerful.’<sup>329</sup>

The MSs are alleged to have been increasingly interfering in the DG since the end of the Delors era, the Directors are apparently; ‘political animals’<sup>330</sup> and that since the end of the Delors Commission MSs began to ‘ . . . lean on their Directors.’<sup>331</sup> So although ‘ . . . formally there is no new political influence, in terms of quality more pressure is being applied.’<sup>332</sup> When the MSs want to stop a piece of legislation in the DG, they have been alleged

<sup>320</sup> See note 41 Menon: Hayward (1996) p.273 citing Buchan and Colchester (1990). p. 43,150

<sup>321</sup> See note 103 Peterson; Bomberg (1999) p.76

<sup>322</sup> Interviews with Commission Officials: DG ENT

<sup>323</sup> *ibid*

<sup>324</sup> *ibid*

<sup>325</sup> *ibid*

<sup>326</sup> *ibid*

<sup>327</sup> *ibid*

<sup>328</sup> *ibid*

<sup>329</sup> *ibid*

<sup>330</sup> *ibid*

<sup>331</sup> *ibid*

<sup>332</sup> *ibid*



to have got their staff placed in it to achieve just that.<sup>333</sup> One strategy is allegedly to have general A4 grades (Heads of Unit) and experts as well as Desk Officers put in position if a MS wants this to happen.<sup>334</sup> The Director General of the DG was stated to have often been German, reflecting German concerns about industry.

## 7.9 DG BUREAUCRATISATION

The DG was not perceived to be as bureaucratic as some in the Commission, in particular DG AGRI was singled out as an example of 'horrific'<sup>335</sup> bureaucracy. Bureaucracy in the DG allegedly related directly to the political importance of the dossier in question; the more political it was perceived to be by the hierarchy then the more bureaucratic controls would be used.<sup>336</sup> This was stated by a senior official as well, 'It is a very hierarchical organisation like the UN only if dossiers involving political elements and method are used, for the rest you are free and there are no checks or controls.'<sup>337</sup> If it has a high profile then all the hierarchy want to be involved, the chemical's dossier REACH was an example of this.<sup>338</sup> Oddly enough the more bureaucratic a dossier the better it can allegedly be for the official's promotion chances. They will be noticed by the hierarchy. Thus some officials like it for this reason whilst others avoid it for the sake of a quiet life.<sup>339</sup> The bureaucracy in the DG it was stressed, can be a protection for the official, if he is able to pass responsibility upwards via bureaucratic controls to his superiors this is safer for the official than making the decision himself.<sup>340</sup>

The interaction of a recently formed unit with the bureaucratic system in the DG and Commission was shown nicely by the experiences of the REACH unit. Allegedly the official's trick was to try to avoid 'traditional hierarchies' by having a ' . . . small team at the bottom take the decisions . . . tried to sort things out at desk level and then pass things up the hierarchy.'<sup>341</sup> The unit worked closely with the comparable unit in DG XI. The unit was fortunate that it had the active involvement by the Commissioner and Cabinet ' . . . for REACH, the Cabinet and Commissioner realised its importance and were all on board.'<sup>342</sup> All in all the more members of the DG management hierarchy involved allegedly the lower the efficiency of the unit, assistance of the political level can be crucial in remedying this 'There were only a small number of officials of the hierarchy involved on REACH which made it effective; If your policy is important and Commissioner and DG interests want it and promote it, the hierarchy is removed, there are ways around it. Once a policy is out of the political limelight then it will suffer, briefings are ignored it is no longer priority.'<sup>343</sup> One official alleged that 'traditionally it has been Cabinet versus the services. . . . There are problems if the Cabinet feels closer to the Commissioner than to the services; they are supposed to be a bridge between them.'<sup>344</sup> Normally though apparently in the DG 'the Cabinet are too busy.'<sup>345</sup> The informal structure of the REACH unit and its special position in the DG allowed it several privileges; ' . . . the REACH unit is seen as an exception as it has a team atmosphere . . . (it) had a hotline

<sup>333</sup> Interviews with Commission Officials: DG ENT

<sup>334</sup> *ibid*

<sup>335</sup> *ibid*

<sup>336</sup> *ibid*

<sup>337</sup> *ibid*

<sup>338</sup> *ibid*

<sup>339</sup> *ibid*

<sup>340</sup> *ibid*

<sup>341</sup> *ibid*

<sup>342</sup> *ibid*

<sup>343</sup> *ibid*

<sup>344</sup> *ibid*

<sup>345</sup> *ibid*

and was priority; there were deadlines and so hierarchy was bypassed; ... worked with whoever was there at the time we “trusted each other.”<sup>346</sup> However usually apparently ‘the higher the decision goes the more formalistic it becomes.’<sup>347</sup> That said ‘REACH could have been drawn up by Desk Officers alone if there had been less controversy and political requirements.’<sup>348</sup> The rest of the DG seemed to see the status of the unit as something special which they would have liked too ‘... other units complained as they were not properly involved with REACH... The horizontal units which are supposed to pull the DG together are not effective and are constantly wanting REACH unit to report more but then complain that it is too slow. These units are constantly working on ways of “improving” communication.’<sup>349</sup>

One of the Kinnock reforms which affected both Desk Officers and Heads of Unit considerably was that of CDR, the creation of a career development plan for staff. In principle it seemed to have been well received, but the way it was carried out led to protests ‘Linking staff objectives to the management plan of DG is a good idea; the staff like it and like to discuss evaluation and personal progression. The point element in the CDR damaged the process.’<sup>350</sup> Under the scheme merit points from 1-20 could be given in reality only 13-14 are given making the exercise ‘pointless.’<sup>351</sup> Furthermore the goal was to allow Heads of Unit, those closest to the officials the greatest evaluative power, but a parallel point system was introduced which left the Director General of the DG in control of the ‘priority points’ which actually counted towards promotion.<sup>352</sup> In essence the ‘problem of CDR is you set targets which staff then achieve but only a certain number can be promoted.’<sup>353</sup> The system also seemed to ignore another fact in the Commission, which was that officials of the same grade could serve under each other, thus two A4s might work in the same unit and one be the Unit Head. Under CDR this is no longer possible ‘this is a return to the grade and function having to be the same which had existed before and is not logical.’ Directors were alleged to have, in practice, the ‘... final say over last point allocation.’<sup>354</sup> Not surprisingly the Court of Justice had cases before it with regard to the CDR scheme.<sup>355</sup> All in all the promotion system had not got much less complicated and still was a ‘very complex promotion scheme.’<sup>356</sup> CDR was said to be ‘killing synergies and experience and giving too much power to Directors and responsibilities to Heads of Unit,’<sup>357</sup> and was unhelpful for the entrepreneurial spirit of the officials.<sup>358</sup>

Due to the nervous climate in the Prodi Commission setting reforms and requirements to re-take control of the Commission and the interest that the MSs had in applying influence to Directors of their nationality, the latter are alleged to have taken to ‘... micro management. Directors were more fearful and wanted to control things more.’<sup>359</sup> This apparently led to their reluctance to delegate despite the need for even more delegation of a positive nature being present ‘Communication, delegation are not there... It is hard to bypass Directors and that means delays.’<sup>360</sup> This sort of micro management was also apparently increasingly noticeable

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<sup>346</sup> Interviews with Commission Officials: DG ENT

<sup>347</sup> *ibid*

<sup>348</sup> *ibid*

<sup>349</sup> *ibid*

<sup>350</sup> *ibid*

<sup>351</sup> *ibid*

<sup>352</sup> *ibid*

<sup>353</sup> *ibid*

<sup>354</sup> *ibid*

<sup>355</sup> *ibid*

<sup>356</sup> *ibid*

<sup>357</sup> *ibid*

<sup>358</sup> *ibid*

<sup>359</sup> *ibid*

<sup>360</sup> *ibid*



in DG XI as a result of bureaucratization. DG REGIO will be shown to have also seen Desk Officer's freedom reduced with procedures increased.

There was allegedly another side to the bureaucratization '... bureaucracy is everywhere and duplication, new DG procedures which are much more complicated have led to this. Before, we could manage four studies a year, now, owing to the above only two.'<sup>361</sup>The figures for the increase or decrease in the time spent on both policy work and/or bureaucratic tasks makes for alarming reading 'we spend 40% less time on policy and Heads of Unit and Desk Officers are easily doing 5 times more procedures, taking double the time. Between 60-70% more time is spent on the budget...',<sup>362</sup>for which there were said to be '... 50% more procedures.'<sup>363</sup>The effects were clear 'the budget was not committed due to the number of procedures, 2-3 times as much time is taken for the calls to tender procedure.'<sup>364</sup>This was emphasised by another official '... everything was slowed down. Impact Assessments intended to improve legislation slowed down... The legislative process has changed and slowed, working out the details of Lisbon has slowed and project financing has slowed; 15% in some units 80% in others more time is taken on unnecessary procedures.'<sup>365</sup>Project financing in general has '... slowed right down,' which has had an effect on the enlargement process.<sup>366</sup>The MSs will have seen some of the proposals that they may have wanted also slowed right down, maybe this was also an indirect benefit of the bureaucratization.

It is in the area of finances that the burden of procedures has really apparently come to bear and delegation of financial responsibility further down the hierarchy led to '... staff getting rid of budgets to cut down problems of doing projects, due to the personal accountability and personal liability of those signing.'<sup>367</sup>Despite the delegation, the procedures have allegedly not become simpler as would have been expected '... there are now very complicated procedures, 10-12 (people) must sign for payments to be made; it was bad before but now impossible; it seems to be good for financial units to block Heads of Units.'<sup>368</sup>The work of units used to be above all to verify the quality of the project to be undertaken, to see if the projects made sense by carrying out studies and evaluations. Now however staff do not have the time available to worry about quality, 'it used to be 50-50% (of time spent) for financial control and management of projects, then 60-40% now 5-95%. We avoid making studies for projects. No one in the units wants to do the financial side and one person must. They are frightened to do this... financial responsibility is good but this is a total over reaction.'<sup>369</sup>The staff and lower management were frustrated and this was true of all the DGs. They wanted to do a good job and to deliver the Europe that people wanted but could not, 'there is lots of training in financial management; there are lots of bad data bases for financial management. It is very frustrating as projects are rejected and time wasted by financial staff and units.'<sup>370</sup>One official reflected 'There are 5 times more procedures than before. In old Commission they took short cuts but not illegal ones and now are paying for this attempt at efficiency.'<sup>371</sup>

Other effects of this increase in bureaucracy were that 'since 2000 efficiency and effectiveness in the DG has gone right down,' the fact that the budget 'which is approved from the EP

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<sup>361</sup> Interviews with Commission Officials: DG ENT

<sup>362</sup> *ibid*

<sup>363</sup> *ibid*

<sup>364</sup> *ibid*

<sup>365</sup> *ibid*

<sup>366</sup> *ibid*

<sup>367</sup> *ibid*

<sup>368</sup> *ibid*

<sup>369</sup> *ibid*

<sup>370</sup> *ibid*

<sup>371</sup> *ibid*

is not and has not been committed since it cannot be, there are so many procedures,<sup>372</sup> was stressed. The organisational effect of the increases in bureaucracy have allegedly been that 'The planning, reporting system and human resources and budget have become more complex in every area, (with) very cumbersome procedures needing experts to do it: financial units, Human Resource units, audit people etc.'<sup>373</sup> For some of the officials the reasons for the changes were clear 'this was another example of fear management, endless controls and procedures and so a paralysed Commission.'<sup>374</sup> Prior to the changes one of the managers stated that he had only had one audit controller checking him, then he had five groups of controllers auditing him.<sup>375</sup> Attempts to introduce management by objective received a mixed response, one thought it helped to get resources attached to sensible objectives,<sup>376</sup> but most considered that it measured the wrong items like letters sent within certain time periods which are hardly the key indicators for the varied jobs of Commission officials.<sup>377</sup>

## 7.10 COMMISSION LAUNCH OF NEW DYNAMIC PHASE?

The sad irony is that allegedly all the staff which the Prodi Commission hoped to finally 'free up' to make policy and politics and launch a Commission dynamic phase rather than managing projects, have been absorbed by the new horizontal units and the need to perform all the procedures to ensure that the service's staff and management are kept from erring, 'before DG ADMIN had done the management and was professional; the management tasks devolved to DGs. All the 'freed up' staff resulting from the reduced DG ADMIN were then used up on management and not on policy as intended. The big goal of Prodi had been to get Commission back to making policy and not managing tasks, and so the reduction in DG ADMIN; in reality even less policy resulted as management tasks ate up the 'slack' that resulted. There is now one budgetary officer per unit, every unit even if one unit makes only one payment and another a thousand.'<sup>378</sup>

## 7.11 COMMISSION FRAGMENTATION: INTER DG RELATIONSHIPS

The role of centralisation versus decentralisation in the Commission was also stated to be a reason for the 2000 reorganisation and creation of the new DG; there is apparently a natural 'swing' in the Commission between centralising and decentralising.<sup>379</sup> The Commissioners allegedly wanted to devolve a lot of responsibility to the various DGs so that the College itself could no longer be held responsible for certain financial matters 'in the pre Prodi period the budget was collectively approved in the College. President Prodi said no to collective responsibility and instead made the Director Generals personally responsible for their budgets. Now the Commissioners are responsible for nothing. This was to protect the Commissioners.'<sup>380</sup>

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<sup>372</sup> Interviews with Commission Officials: DG ENT

<sup>373</sup> *ibid*

<sup>374</sup> *ibid*

<sup>375</sup> *ibid*

<sup>376</sup> *ibid*

<sup>377</sup> *ibid*

<sup>378</sup> *ibid*

<sup>379</sup> *ibid*

<sup>380</sup> *ibid*



The current state of inter DG communication and coordination was described so 'Interservice cooperation is "bad" there is no communication at all between DGs.'<sup>381</sup> A glaring example of the result of the lack of DG communication and coordination was the creation of '... a mirror unit in the DG which checked up on DG XI and which went from 2 to 20 staff members. This did help to increase DG ENT power. The REACH file showed this increase in ENT power over the last five years. It was harder for DG XI to enforce things against DG ENT, although climate change file still showed DG ENT weaknesses. ...'<sup>382</sup> The alleged creation of units to essentially follow and 'mark,' using football terminology, other DGs which you do not trust but have to deal with reveals the depth of the problem of fragmentation. The decline in DGXI's perceived antagonistic stance towards industry resulted in the mirroring units allegedly declining in size again.<sup>383</sup> The increase in fragmentation and the formal decentralisation which encapsulated it had several unexpected consequences, there '... was a loss in the shared and sharing of a legal culture, this certainly was lost in DG ENT and it is only slowly returning. The training in writing legislation has improved. The legal service puts tools together and says what can and must go into legislation. The problem is that not enough people take them up on this. Training started ten years ago, since many jobs were not getting done properly.' However the quality of legislation has not drastically improved, yet.<sup>384</sup> The apparent views of industry and SMEs and their representatives about the lack of quality of legislation coming from the Commission and its decline in coherence, probably owed its origins to the fragmentation/decentralisation process as a whole.

That there are problems in the communication and coordination of DGs should be clear, why these occur and details about some of them are discussed now. Up to seven DGs were often involved in deciding an Industrial policy element: DG XIII telecommunications information and exploitation of research; DG III industry; DGXII science and research and development; DG IV; DGI external relations; DG XI; DGXXIII.<sup>385</sup> Struggles between them could be sharp. Industrial policy was seen as the result of negotiations and bargaining between officials and Commissioners of different ideological and national origins. These have often had quite different '... political and economic cultures.'<sup>386</sup> There were the southern European officials who often favoured more protectionist policies and wanted '... active interventionist industrial policy,'<sup>387</sup> and the Northern European officials who favoured a 'minimalist' approach.<sup>388</sup> These two groupings fought almost constantly over core technology industries like electronics. During the 1980s when interventionist policies were most popular in the Commission, then DG XIII was at its most influential. Even at the beginning of the nineties DGXIII was able to generate a report that was very 'interventionist in tone'<sup>389</sup> and this was adopted by the Commission before being toned down in a revision demanded by the more liberal DGs III and IV. With more liberal views predominating in the 1990's other DGs have taken a greater role.<sup>390</sup>

Food policy was an area where DG III was frequently involved in 'bitterly contested' arguments between it and DG AGRI.<sup>391</sup> The formation of an energy policy to deal with climate

<sup>381</sup> Interviews with Commission Officials: DG ENT

<sup>382</sup> *ibid*

<sup>383</sup> *ibid*

<sup>384</sup> *ibid*

<sup>385</sup> See note 11 Lawton, (2000) p.142

<sup>386</sup> *ibid* p.142

<sup>387</sup> *ibid* p.142 referring to Sharp (1991) p.177

<sup>388</sup> *ibid*

<sup>389</sup> *ibid* p.143

<sup>390</sup> *ibid* p.143

<sup>391</sup> See note 42 Stevens: Stevens (2001) p.197 referring to Peterson and Bomberg (1999) p.87 and 141

change saw a contest between ‘ . . . as many as ten separate DGs’<sup>392</sup> of which the industry ones can be sure to have been a part. DG XIII, much of which was later absorbed into DG III was in fact stated to be almost at war within itself ‘ . . . relations are not always harmonious with each Directorate seeking a high profile for its work.’<sup>393</sup> DG III and DG IV have often had a difficult relationship in part owing to the nature of their respective tasks; the latter tend to concentrate on an industry’s needs and the former are more concerned that consumers are being properly protected and not exploited.<sup>394</sup> An example of the disputes was in relation to the motor industry. DG IV wanted to see the motor industry restructured in the face of Japanese competition by letting market forces and competition guide. DG III wanted to create a strong motor industry which would then be able to compete internationally. In principle it wanted the industry granted the necessary time to restructure which was at odds with DG IV’s view.<sup>395</sup> Another notable clash between the two DGs came over the De Havilland dossier. In essence in 1991 ATR Avions des Transports Regional told the Commission that it intended to buy control of the De Havilland division of Boeing of Canada. The Commission blocked the take over due to concerns about its anti competitive results. French politicians were outraged and considered the action to be ‘ . . . contrary to the interests of Europe.’<sup>396</sup> The French are stated to have held the belief that a ‘ . . . dirigiste approach to industrial policy,’<sup>397</sup> was correct. The Commission subsequently back-pedalled and the competition policy element was reduced and in future DG IV had to coordinate with DG III and form a common position to bring before the Commission. It was hoped that this would reduce the ‘ . . . source of intra Commission tension, pitting DG III . . . against the Competition Directorate.’<sup>398</sup> The German Industrial Affairs Commissioner referred to DG IV harshly, ‘ . . . castigating the “competition ayatollahs” for their failure to think in global terms rather than European markets.’<sup>399</sup> Other clashes resulted in very different outcomes also of a less than desirable nature as in the Mannesmann steel tubes merger.<sup>400</sup>

Clashes occurred in 1989 between DG III and DG X responsible for cultural matters over the EC broadcasting policy. Compared to DG X, DG III is described as being ‘ultra-liberal and pro-market’<sup>401</sup> whereas DG X is more culturally oriented and deals with actors, broadcasters as a sector. The tensions between the two were ‘ideological’<sup>402</sup> as ‘ . . . each DG has its own ideological orientation and interest group constituency,’<sup>403</sup> and were staffed by very different types of official with DG III being mostly made up of lawyers and economists and DG X of generalists.<sup>404</sup> These differences and frictions resulted in a fragmented directive with ‘a lack of coherence of the directive itself.’<sup>405</sup> DG X weakness probably resulted on its having a minor role.<sup>406</sup>

In the area of Biotechnology DG III came into conflict with DG XI which is often at logger-heads with the Industrial DGs. At first in 1984 DG XI was not present at the Biotechnology

<sup>392</sup> See note 42 Stevens: Stevens (2001) p.197 referring to Peterson and Bomberg (1999) p.87 and 141

<sup>393</sup> *ibid* p.198 referring to Cram 1997 p.78

<sup>394</sup> Rhys,G. Motor Vehicles in Johnson,P. (ed) *Industries in Europe*, Cheltenham, Edward Elgar publishing Ltd p.254

<sup>395</sup> *ibid*

<sup>396</sup> Jones, C. *Aerospace* in (eds) Menon, A and Kassim, H. *The European Union and National Industrial Policy*, London, Routledge (1996) p.91 referring to Jacques Chirac, in *La Croix* 8.10.1991

<sup>397</sup> *ibid* p.92

<sup>398</sup> *ibid* p.93

<sup>399</sup> See note 41 Menon: Hayward (1996) p.273 citing Dinan 1994 p.380

<sup>400</sup> *ibid* p.273 citing Wilks and McGowan 1995:59

<sup>401</sup> See note 125 Nugent (2002) p.213

<sup>402</sup> *ibid* p.213

<sup>403</sup> *ibid* p.213

<sup>404</sup> *ibid* p.213-214

<sup>405</sup> *ibid* p.213

<sup>406</sup> *ibid* p.213



steering committee as there was ‘ . . . no legal basis for environmental regulation.’<sup>407</sup> As DG XI grew in power and legitimacy with the increasing environmental awareness of the European public, so between 1985-1990 DG III and DG XI shared chairmanship of the newer and more active Biotechnology Regulations Inter service committee.<sup>408</sup> DG XI in practice drew up the Directive on GMOs as DG III, whilst being a co chef de file for one of them, was overstretched in dealing with the SEA. DGIII tried to force a special clause into one of the directives (90/220) which would have allowed for certain exclusions and exemptions for industries.<sup>409</sup> It succeeded in winning in the Commission but DG XI worked closely together with the European Parliament Committee and the Council and regained much of the lost ground.<sup>410</sup> Thus a form of strategic institutional manoeuvring resulted in DG XI outwitting DG III. However DG III was able to demand a reform of the directives and the biotechnology debate.<sup>411</sup> There were hostile clashes between the two DGs and their respective Commissioners in 1994-5, Bangemann for DG III and Ritt Bjerregaard for DG XI.<sup>412</sup> Amended directives were the result and the European Parliament forced even more compromise on DG III and the industrialist lobby in 1998 during the passage of the directive for the protection of biological inventions.<sup>413</sup>

REACH is another more recent example of the struggle between DG XI and DG ENT. It is a controversial directive which some claim to be unnecessary, regulation where the public should have been educated instead.<sup>414</sup> Following this line of argument then, REACH seems to be an attempt by the EU to extend its regulatory reach where it should not have ventured, using a faulty understanding of the problem it aimed to solve.<sup>415</sup> The REACH directive on chemicals has been seen as a testing ground for the strength of the two DGs and the struggle continued through the last five or so years. Both had units involved in drawing up the directive and discussion was hard between them.<sup>416</sup> Bearing in mind the alleged ability of officials to leak information to industry and to activate opposition to policy, the burst of industry and member state outrage against the policy could well have been part of the strategy, albeit belated, of the DG ENT officials, maybe even only accidentally, by keeping industry informed. Paradoxically there are those who state that DG ENT has been the clear winner, usually those from the environmental side, and then the opposite, the industrialists and many in DG ENT who think that the strength of DG XI was shown in the REACH directive. Maybe a solution is that purists on both sides are unlikely to be fully satisfied and the same applies to those in the DGs who failed to see their proposals adopted. However, there is room to see that DG XI was weakened as the result of its constant reorganisations and that this led to a more industry friendly REACH directive. This is the view expressed by some Greens who perceive the introduction of impact assessments to assess the effect of legislation as being weighted in favour of economic impacts, ‘ . . . impact assessments are making it more and more difficult for the regulator to take action.’<sup>417</sup> A forum was set up between DG ENT and DG XI coordinating the ‘ . . . further work on impact assessment’, two out of three of the studies carried out were paid for by industry, leading environmental NGOs to withdraw their support.

<sup>407</sup> Patterson, L. A. *Biotechnology Policy* in (eds) Wallace, H and Wallace, W. *Policy Making in the European Union* fourth edition (2000) Oxford, Oxford University Press p. 329

<sup>408</sup> See note 407 Patterson (2000) p.329

<sup>409</sup> *ibid* p.331-333

<sup>410</sup> *ibid* p.333

<sup>411</sup> *ibid* p.336

<sup>412</sup> *ibid* p.337

<sup>413</sup> *ibid* p.339

<sup>414</sup> European Voice 10-17 November 2004 Bergkamp, L. *EU chemicals regulation plan is unsustainable*

<sup>415</sup> *ibid*

<sup>416</sup> European Voice 1-14 April 2004 Carstens, K. *Wallstroem and Co. unmoved by opposition to REACH plan*

<sup>417</sup> European Voice 14-20 October 2004. Singhofen, A. advisor to the Greens in the European Parliament in Mill, K. *Lessons learned from chemical reactions*

Whatever else, the new competitiveness, vice president Verheugen has stated he will aim to amend the legislation to make it more industry friendly.<sup>418</sup> A tacit acceptance it would seem that DG XI had been more successful than some would have liked, but he would appear with the Commission's blessing to be setting out to restore the fortunes of industry and DG ENT since he will be based in it. Possibly a return to a form of industrial policy may occur, apparently the *Le Monde* thinks this will happen; however Verhaugen has stated that he would not welcome a 1970s style industrial policy.<sup>419</sup> That would still leave open the possibility of a more moderate version. REACH also showed that DG ENT appears to have similar problems to those of DG III, which is a major part of it, in communicating new legislation proposals to industry. Once again the new legislation allegedly appeared to surprise industry, 'REACH seemed to come all of a sudden, despite a white paper two years before.'<sup>420</sup> REACH apparently showed DG ENT as being as weak as its main predecessor presumably for similar reasons, understaffed and maybe not properly integrated internally. This was certainly mentioned in interviews, the weakness of internal coordination and communication, with units remaining quite insular. But the ability to force a willingness to accept changes<sup>421</sup> to the directive at a later stage, shows network strength and the presence of powerful actors in it. Thus the DG performs better at network reactive rather than proactive management 'the present proposal . . . has been seriously weakened during its drafting in the European Commission. A comparison of the Commission's initial white paper with its eventual proposal shows that it backed down in the face of strong lobbying from industry and weakened its position . . .'<sup>422</sup> It has to be said that the increase in economic worries has led to a decrease in the clout of environmental groups and the DG XI in the Commission as a whole, which will have also enabled industry and its representative DG ENT to strike back at REACH now that a better legislative political climate has returned.<sup>423</sup> Only moderately better, as the fact that REACH will remain on the cards shows. It is interesting that the mirroring unit of DG ENT was reduced considerably during this period as if there was no longer any need to worry about DG XI.

The lack of trust between the various DGs and their often opposed sectors they serve was shown in the utter unwillingness of DGs to disclose information to other DGs. Attempts by the Commission to improve coordination and thus coherence of policy within the Commission have failed to a large degree, mostly due to the DGs mutual suspicion and lack of trust. Impact Assessments and inter service consultation processes were undermined because DGs saw them as invitations for other DGs to spy on them. These points are discussed in the findings chapter.

## 7.12 ENLARGEMENT AND THE DG

At the early stage of enlargement the so called EA agreements were used (Europe Agreements) to guide the NMSs towards the Union and the negotiations for the EAs began in 1990. There were problems at this stage between those who favoured long term political objectives or those who were ' . . . under pressure from short-term problems.'<sup>424</sup> Basically DG enlargement was opposed by DG AGRI and DG III, the latter under pressure from their respective

<sup>418</sup> Charlemagne *Europe's dash for growth* The Economist February 5 2005

<sup>419</sup> *ibid*

<sup>420</sup> See note 417 European Voice 14-20 October 2004 referring to Jos Delbeke Director in DG Environment,

<sup>421</sup> European Voice 7-13 April 2005. Dimas, S European Commissioner for the Environment

<sup>422</sup> *ibid* . Sjoestedt MEP

<sup>423</sup> See note 61 European Voice 7-13 April 2005

<sup>424</sup> Sedelmeier, U and Wallace, H. *Eastern Enlargement in process* in (eds) Wallace, H and Wallace, W. *Policy Making in the European Union* fourth edition (2000) Oxford, Oxford University Press p.439



sectors, much the same happened in MSs in their governmental departments.<sup>425</sup> The result was that '... the ability of the sectoral logic to constrain a more politically motivated agreement was greatly facilitated by the fragmentation of the policy process and the lack of close oversight by the macro-policy-makers in the member governments. Defensive sectoral interests were able to insulate specific aspects of the EAs from political pressures for a more generous approach to the CEECs and to set the baseline of what would be on offer. As some of those involved on the CEEC side were able to observe, as fast as they identified issues on which they wanted to press for more open market access, they found that an EU-based lobby had beaten them to the EU negotiators.'<sup>426</sup>

The White paper issued by the Commission in 1995 'Preparation of the Associated Countries of Central and Eastern Europe for Integration into the Internal market of the Union' was quite clear in its judgement which '... made it evident that there were a substantial number of actors within the EU that had a stake in pressing the CEECs (NMSs) to take on as much of the EU *acquis communautaire* as possible before accession. The extension of SEM regulatory arrangements to the CEECs would ease the path for western companies doing business and had the potential to raise the costs of production of CEEC competitors. Some EU industry associations had started to lobby both the CEEC governments and the Commission in an attempt to make the approximation process as favourable to them as possible.'<sup>427</sup> DGIII even went so far as to ask the European pharmaceutical industry association to '... identify regulatory problems in the CEECs and to propose solutions ... '<sup>428</sup> Thus it can be seen that in the industrial sector many of the actors were pressing for their views to be heard and included into the white paper and so forced upon the NMSs, as in fact happened. The strength of various 'potentially ... threatened,'<sup>429</sup> economic interests and their demands were assessed to be sufficient to make the accession '... much more difficult'<sup>430</sup> than that of the EFTA states in combination with the EU's unwillingness to accept lower standards.<sup>431</sup>

In the field of competition the NMSs were expected to meet standards which were higher and tougher than those required of the old MSs.<sup>432</sup> Forcing economies undergoing transition and restructuring to meet these, and also anti trust regulations was dubious, and whether their economic welfare was behind the reasoning is doubtful.<sup>433</sup> In the whole of the SEM, (Single European Market) there was a rather surprising '... hardening of the definition of the SEM,'<sup>434</sup> combined with a '... softening of the parameters about how the Common Agricultural Policy (CAP) should develop.'<sup>435</sup> This was in line with the growing understanding that SEM was at the heart of the integration project<sup>436</sup> and in contrast to previous enlargements where the emphasis was on the CAP rather than the SEM.<sup>437</sup> The following quote sums up the enlargement process. '... Thus in the case of eastern enlargement we can observe the opposite phenomenon to the one that we observed in the EFTA case. The EU side is appearing rigid in defence of the *acquis*, preoccupied about not even minimum standards being achiev-

<sup>425</sup> See note 424 Sedelmeier; Wallace (2000)

<sup>426</sup> *ibid* p.439

<sup>427</sup> See note 293 Young.; Wallace (2000) p.119

<sup>428</sup> *ibid* p.119

<sup>429</sup> *ibid* p.124

<sup>430</sup> *ibid* p.124

<sup>431</sup> *ibid* p.124

<sup>432</sup> *ibid* p.121

<sup>433</sup> *ibid*.

<sup>434</sup> *ibid* p.122

<sup>435</sup> *ibid*

<sup>436</sup> *ibid* p.4

<sup>437</sup> *ibid* p.122

able in the short-to-medium term, and disinclined to suppose that the CEEC candidates might have any legitimate distinctive regulatory preferences and tastes of their own.<sup>438</sup>

It seems clear that the NMSs suffered as the result of being outsiders in the Brussel's forum. Like the SMEs they simply did not have a representative institutional body or group of officials with sufficient authority to defend them. Not having your people in place to fight your corner in Brussels will result in problems for the outsider, as in the EU policy, is very dependent on who is present and who has the ear of the officials. Having Policy Networks and MS networks already in place and ready to defend their own interests resulted in SME weakness and NMS problems. The linkage between the two is captured nicely in the following quotation which indicates the cost to Europe as a whole of the failure of the Commission to be fully independent. 'Hungary is now in the second year of EU membership and it has little to show for it. The economy is in poor shape and the unemployment rate is continuously rising, especially among the youth with every fifth young person unable to find a job . . . SMEs are going out of business by the thousand . . . In striking contrast to all the original laws and values of the EU, free movement of people and services only works in one direction. Anybody can come and work or start any kind of business in Hungary, but this is not the case for Hungarians. The majority of the original EU member countries seriously constrain the free movement of workers and services from the East.'<sup>439</sup>

#### 7.12.1 A DG PERSPECTIVE ON THE ENLARGEMENT

A general view of the DG on the NMSs and the enlargement process that it had followed with them, was the NMSs had most of the institutions in place although they were of an unknown quality as they had not been tested yet, like their 'standardisation institutions.' Parts of the DG as well as the NMSs had been prepared for the enlargement by being exposed to working with each other prior to the formal date of enlargement. As a result some of the units were familiar with dealing with the NMSs already. The NMSs were involved in working groups and other committees for well over a couple of years before the formal enlargement. 14-15 programmes were opened up for NMS participation.<sup>440</sup>

The situation in the NMSs was said to be positive and heading in the right direction if still underdeveloped. NMS implementation reports showed that they were catching up fast. But access to finance for small businesses was still small relatively speaking. Innovation strategies which are very important for modern economies were too low but going in the right direction. Bankruptcy laws were stated to be rather recent and judicial experience low, with the result that they will have to learn by doing. On a macro level of economics and finance there was no problem. The Commission had the problem though on a micro level, that there were 10 different systems to be incorporated. Capacity building in institutions was still weak and under developed, but they had shaken off the old guard and often very young people were in high positions, well educated but not well experienced. The private sector was said to have picked off the best candidates.<sup>441</sup>

#### 7.12.2 NMS PERSPECTIVES ON THE ENLARGEMENT

Unsurprisingly the manner in which the NMSs were handled early on in the enlargement process, along with other DG problems, led to some negative comments about the DG and Commission in the questionnaires which officials from Poland, Hungary, Estonia and the

<sup>438</sup> See note 293 Young; Wallace (2000) p.123

<sup>439</sup> Csath. M 'The moral deadlock in Hungary and the EU's answer' EU Observer 23.10.2006

<sup>440</sup> Interviews with Commission Officials: DG ENT

<sup>441</sup> *ibid*



Czech Republic completed via interviews.<sup>442</sup> On the whole though, the DG scored marginally better than some of the other DGs.<sup>443</sup> Regarding the efficiency and effectiveness of the DG before and after the enlargement, with the exception of Poland,<sup>444</sup> the officials considered that the DG had performed 'well' - '4' on a scale of 1-5 with '5' meaning 'excellent' and '1' meaning 'needed a lot of improvement'. The two Polish officials rated the performance of the DG as mostly 'needing some improvement' - '2'.<sup>445</sup> Poland and the Poles were said by the DG officials to be more confident than most of the NMSs and to behave more like Spain and Spanish officials, so the willingness to criticise was maybe higher. Another point is that Poland may well have had more problems with the DG than other NMSs owing to its size and major industrial restructuring requirements.<sup>446</sup> In particular, projects were stated to have been delayed or postponed with some units being very slow and some in the DG failing to respond to 'the present needs' of NMSs.<sup>447</sup>

Regarding projects and procedures in general, the Poles once again were most critical although to the question 'was the DG well prepared for enlargement,' one official answered with '4' i.e. 'good or well' and the other with '2'.<sup>448</sup> One official knew more about the DG before and after the enlargement and elaborated on the subject '... no it wasn't prepared, it needed more experts to deal with the NMSs, in programmes they are unaware of the NMS situation. They need more Poles and quickly.'<sup>449</sup> This official said that nothing had changed before and after the enlargement with project planning received a '2', the same for DG flexibility and authorisation procedures.<sup>450</sup> When asked about the number of bureaucratic tasks and procedures that the Commission had required of the NMSs, the Polish officials considered that it had doubled and or trebled these before and after and therefore gave it a '2'.<sup>451</sup> The Estonian officials agreed with this and added that the DG was not prepared for the enlargement and was '... too late to deal with the enlargement and that there were managerial problems and problems due to reorganisations combined with an 'old fashioned policy'.<sup>452</sup> The Hungarian and Czech officials rated the DG as 'adequate' a '3'.<sup>453</sup> When asked about the attitude of the DG to the enlargement half the NMSs rated it highly at '4' or '5'.<sup>454</sup> But the Poles and the Estonians stating that the hierarchy and political layer were not really supportive there was a '... lack of knowledge, not enough staff training and management'.<sup>455</sup> The DG managed the policy cycle on average adequately or well, involving stakeholders and managing the dossiers well.<sup>456</sup> It was only on the issue of policy evaluation that one of the Polish officials rated the DG as needing some improvement.<sup>457</sup>

The question relating to the internal management, coordination and communication of the DG was more controversial although in overall terms all the officials rated the '... quality, effectiveness and efficiency of internal DG coordination and Communication before and after enlargement as 'adequate' or 'good'.<sup>458</sup> The Czech and Hungarian officials both rated the DG as

<sup>442</sup> Interviews with NMS Officials

<sup>443</sup> *ibid*

<sup>444</sup> *ibid*

<sup>445</sup> *ibid*

<sup>446</sup> Interviews with Commission Official: DG ENT

<sup>447</sup> *ibid*

<sup>448</sup> Interviews with NMS Officials

<sup>449</sup> *ibid*

<sup>450</sup> *ibid*

<sup>451</sup> *ibid*

<sup>452</sup> *ibid*

<sup>453</sup> *ibid*

<sup>454</sup> *ibid*

<sup>455</sup> *ibid*

<sup>456</sup> *ibid*

<sup>457</sup> *ibid*

<sup>458</sup> *ibid*

'adequate' to 'good' on all issues, but the Polish officials and the Estonians were less positive.<sup>459</sup> It was interesting that Estonia was probably the most liberal and economically advanced of the NMSs and Poland probably had the most problems. Particularly badly graded were Commission inter-service coordination and communication before the enlargement, which was graded by the Polish officials with '2' and an Estonian official said that this had been a '... problem with odd decisions made,' and that the DGs had had '... too much discretion.' PHARE projects were stated to have been accepted right through the Commission and all the procedures fulfilled only to finally be stopped by just one DG.<sup>460</sup> This official considered that since the enlargement this situation had got 'better' and that there were '... lots of informal meetings and tripartite meetings and inter-service better law making procedures,'<sup>461</sup> but the Polish officials gave the situation a '1'.<sup>462</sup> DG management and Desk Officer relations before the enlargement needed improvement; there were 'troubles' and there were also problems between the Cabinet and the Directors according to the Estonian official.<sup>463</sup> General comments made by one of the Estonian officials were that the DG needed to modernise more but it was heading in the right direction and the 'Lisbon communication was very good'; another said that the DG had a '... centrifugal dynamic at a higher level,' which caused 'some confusion' and that different parts of the DG 'contradicted each other' and decisions took a long time to make.<sup>464</sup> The Polish officials said that the expert groups in the Commission 'needed better cooperation' and that there was '... duplication in the working groups by the Council and the Commission,' which 'wasn't good enough.'<sup>465</sup>

Regarding Commission governance and the stated goals of the 2001 white paper on the subject of the issues of Commission: openness, accountability, effectiveness and coherence with one exception all the NMSs rated before and after the enlargement the DG as being 'adequate' or 'good.'<sup>466</sup> The exception was one of the Polish officials who rated Commission effectiveness after the enlargement as 'needing some improvement'.<sup>467</sup> The Hungarian official rated the DG's openness as '5' 'excellent'.<sup>468</sup>

The reforms performed by the Commission internally, those linked to the Kinnock reforms and those linked to anti fraud, were seen by one Polish official as a problem as they made for 'very late payments'. The other Polish official said that these had doubled problems but that they '... needed to be done,' and therefore '... were not problematic.' One Polish official thought the Commission to be '... too centralising and powerful,' but the other said that whilst this was true and that '... enough networks are too Brussels based,' added the 'Commission needs more power,' and '... should be more powerful.'<sup>469</sup> These last comments were agreed upon by the Estonian officials.<sup>470</sup> The Czech official thought it was 'just right'.<sup>471</sup> When asked if Commission expertise had changed one Estonian official said that it had '... learnt about NMSs,' and that it had '... learnt to buy in special knowledge and to review methodology.'<sup>472</sup> All the officials apart from the Hungarian reported that they had experienced

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<sup>459</sup> Interviews with NMS Officials

<sup>460</sup> *ibid*

<sup>461</sup> *ibid*

<sup>462</sup> *ibid*

<sup>463</sup> *ibid*

<sup>464</sup> *ibid*

<sup>465</sup> *ibid*

<sup>466</sup> *ibid*

<sup>467</sup> *ibid*

<sup>468</sup> *ibid*

<sup>469</sup> *ibid*

<sup>470</sup> *ibid*

<sup>471</sup> *ibid*

<sup>472</sup> *ibid*



problems ‘ . . . as a result of staff turnover and reorganisations.’<sup>473</sup> One of the Polish officials stated that after the 2004 reorganisation the DG was now ‘ . . . better structured and that DG ENT was very mixed up before, and problems oddly mixed, now it is more logical.’<sup>474</sup> The Estonian officials stated that the administrative culture of the DG had changed, before ‘ . . . they suffered from the French bureaucratic system (which is) very time consuming,’ now ‘ . . . enlargement changed its culture, there are two Directors under forty. And the Commission is trying to cut down on bad bureaucracy.’<sup>475</sup> When asked if the Commission could ‘ . . . have done more to help the NMSs,’ one Polish official said ‘yes’,<sup>476</sup> all the other officials said ‘no’ or ‘ . . . the DG tried to help’.<sup>477</sup> One Polish official said that the ‘Poles were discriminated against’ by the Commission, as the ‘ . . . competition to A1-2 positions in the Commission showed, political decisions were taken. Too few Poles are in top positions despite Poland’s size.’<sup>478</sup>

Some NMSs considered that the enlargement process had been unnecessarily complex, convoluted and bureaucratic, because the Commission had declined to consider already improved and modernised institutional processes and structures present in the NMSs, and literally demanded that restructuring begin according to its standards, without assessing the efficacy of the recently modernised local structures available. This led to confusion and delay as whole groups of well trained experts were excluded from adding their experience and expertise to the process.<sup>479</sup>

### 7.13 CONCLUSION

We have now seen that the DG went through a similar process to the other DGs with the exception being that it was merged to be formed and reorganization carried out at the same time rather than as with the other DGs which were reorganized and then underwent major bureaucratization. The downgrading of DG XXIII and the removal of many of its Policy Networks certainly weakened the SME officials in the DG considerably. Whilst there seemed to have been a whiff of fraud or corruption related to this DG in the past, maybe a Policy Network had got out of hand, the majority of its work seemed to be both necessary and subsequently missed. The submerging of SME concerns in the big-industry-dominated-DG ENT seems to have affected negatively the SMEs within the Commission. Maybe SMEs lost out doubly, the dirigists wanted support to go to big industry as had traditionally happened, whilst the liberals in the DG wanted no support for any industries at all; thus the SMEs were caught between two stools. The resilience of reform resisting big industry networks and backward looking well established interest groups was damaging SMEs and their weaker voice, even if there was not an active anti SME policy.

MSs and Policy Networks seem to have been active in the DG as in other DGs and like the Policy Networks this had to be stopped, or reduced if possible. Seemingly the link between MSs ‘leaning’ on the Directors more and the same Directors then having to micro manage seems to make clear the link between MS pressure and the Commission using bureaucratization to combat it. ‘Fear management’ was the expression used to describe the motive of the College behind the bureaucratization. The College was allegedly frightened of any further weakening of the Commission in the face of increasingly hostile political actors like the MSs

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<sup>473</sup> Interviews with NMS Officials

<sup>474</sup> *ibid*

<sup>475</sup> *ibid*

<sup>476</sup> *ibid*

<sup>477</sup> *ibid*

<sup>478</sup> *ibid*

<sup>479</sup> *ibid*

and seemingly also the EP. To some extent reforms and bureaucratization would improve the management of finances. More bureaucratic controls and being more like a slow bureaucracy seemed to satisfy the MSs even though these are ineffective to stop corruption. Indeed the reforms and bureaucratisation seem to have been viewed by plenty of officials as being excessive and unnecessary and in the end seemingly unsuccessful at achieving their stated goals, and the DG had to be reorganized again in 2004 to realign itself once more with the Lisbon agenda. The reaction of the Commission to its 'fear' was in part to hide and be seen to be hiding, by becoming more bureaucratic. Policy Networks, Sectoral fragmentation, wayward Commissioners and MS influence could be reduced by bureaucratisation. It would be hard for the MSs to object over loudly to losing their influence in the interests of a corruption free and more efficient Commission. Policy Networks and policy management could, so the Prodi Commission seemingly hoped, finally be removed and as a bonus staff would be available for the Commission to launch the dynamic phase that always follows from a retreat.

Of considerable interest to us, is the fact that the state of the DG and weakness of the SMEs and NMSs within it resulted in both suffering. Although a policy making DG, significant costs resulted for the under represented, owing to their lack of status in the DG. The picture remains of a DG which was extremely geared to being technocratic and close to big industry and powerful lobbies. Whatever lip service was paid to the SMEs the facts did not appear to support the rhetoric. Whilst the DG did not show too many obvious indications of Policy Networks, these are stated by several observers to be in existence and powerfully so. At times in its history, or rather the history of DG III, its main element, there have been indications that the DG had been captured by various industrial groups who had almost dictated legislation. It had also been taken over by MSs at various times. The sectors have shown themselves able to create problems for the NMSs and the SMEs as the DG was not able to move itself mentally or organizationally from its dependence and commitment to big industry.

The alleged slow speed of decision making owing to the Co-decision process, encouraged Policy Networks and backroom deals to occur even more:

'The application of the Co-decision procedure has enhanced the importance of Policy Networks as arenas for informal bargaining on most internal market questions. The procedure is complex and potentially time consuming . . . Co-decision has made the EU a more pluralistic system of government, but also increased its reliance on informal deals and backroom bargaining.'<sup>480</sup>

It is worth noting that the amount of time that officials were spending interacting (presumably) in networks in particular with the EP and the Council. For the DG as a whole the time spent dealing with the Council went up by 10-20% and dealing with the EP from 20-25%, for some units up as much as 50%. Whilst this was in part no doubt due to the move to the Co-decision procedure, the increase in Council communication seems to suggest that more backroom deals and bargaining were occurring. Thus the time available for DG or Commission work alone, like in drawing up legislation had presumably decreased accordingly.

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<sup>480</sup> See note 103 Peterson; Bomberg (1999) p.85-86



## **Interview Dates**

### **DG Enterprise Officials**

Interviews with ten officials between. 31.03.04 and 09.08.05

### **NMS Officials**

#### **Poland**

Official 1.  
Official 2. 18.03.05

#### **Estonian**

Official 1. 04.03.05  
Official 2. 30.03.05

#### **Hungary**

Official 11.04.05

#### **Czech Republic**

Official 27.04.05

## **8. DG REGIONAL POLICY**

### **MS INFLUENCE AND POLICY NETWORKS VERSUS ENLARGEMENT?**

Having considered our second policy making DG we return now to a paying DG. Having already looked at DG AGRI, our first paying DG, we can make certain assumptions about DG REGIO. If the DG policy are following the Commission trend then there should have been signs of greater MS presence in the DG, attempts at re-nationalization of the policy and or a reduction in its size. Again if the DG is in line with the general trend then it could be expected to be undergoing bureaucratization and in part rejecting and resisting major reforms. It would also be expected to be becoming increasingly dynamic or 'bullish.' The contact that the DG could be expected to have with every layer of MS governance, owing to the DG's focus on involving local and regional governance in the funds it administers, should lead to high levels of MS involvement in the DG. Where large sums are disbursed there are likely to be loyal constituencies or here Policy Networks willing to struggle to maintain their share of the funds available. As these constituencies contain numbers of MS officials and politicians of all levels of governance their strength and influence could be considerable. As with DG AGRI and DG ENT the outsiders in the enlargement process, the NMSs or CEECs as they were sometimes referred to, will probably have suffered as a result of their status.

The Cohesion Policy has been the subject of much academic debate recently. The criticisms of it have come from economists and also from a high level group of experts. The so called Sapir Report which was sponsored by President Prodi caused a major stir in the Commission and lent support to the detractors from the policy. The DG put up energetic resistance to the policy and its implications. The report and the DG response offer a useful perspective on the policy and also the willingness of the Commission to reform policies let alone its administration. Both are examined in the chapter.

The theoretical chapter considered the main theories relating to the European Union and their interpretational force; the same theories are, of course, applicable to the area of the Cohesion Policy (CP) and its Structural Funds (SF). There is considerable discussion amongst academics of the European Union about the appropriate theoretical perspective with which to analyse the Cohesion policy of the Union. Liberal Intergovernmentalism stresses the role of the Member States (MSs) and Multi Level Governance emphasises the complex nature of the policy and the power of the Commission in it. The truth seems, according to some leading academics, in particular the Sapir report, to lie in the middle.

The chapter first considers the CP itself, its history, criticisms of it and its actual operation. Then it moves on to examine the DG organisation in a similar manner to that used with the other DGs; the influence of the MSs is assessed as is the presence of bureaucratization. The issue of Policy Networks is addressed and the identification of those linked to the DG is pursued. The Enlargement process and the affects of the DG on it, is finally brought to the fore and the perceptions of the main actors; the DG and the NMSs are used to lead to the chapter's conclusion



## 8.1 THE EU STRUCTURAL FUNDS POLICY: THEORY, HISTORY AND PRACTICE

### 8.1.1 THEORY

Two major theories about the EU, Liberal Intergovernmentalism (LI) and Multi Level Governance (MLG) have explanations for the development of the CP and the reforms to it which reflect their approach to EU policies in general. Hooghe argues for MLG that the Commission followed a distinct strategy aimed at maximising its preferences and thereby reducing the MSs,<sup>1</sup> and stresses that the Commission drafted the reforms internally and deliberately avoided MS involvement in the process.<sup>1</sup> Thus whilst an LI approach can provide an explanation of the results with MSs maximising their position and acting very much in their own individual interests, the actual drafting process carried out in a MS vacuum must imply the Commission acting ‘ . . . as the pivotal actor in designing the regulations,’<sup>2</sup> which fitted well in the observed move of the Commission’s strategy from ‘ . . . maximising financial and legal control towards an emphasis on the policy process.’<sup>3</sup> Sub-national actor involvement was a key element of this new ‘ . . . structural policy-making.’<sup>4</sup> One factor though has to be mentioned as Hooghe does, and that is that the circumstances surrounding the reforms were remarkable and probably a one off with the presence of Delors and the re-launch of the internal market and the SEA combined with a relatively positive economic outlook.<sup>5</sup> Even at this high point in the history of the CP the problem of effective implementation remained whatever the gains in the content of the regulations.<sup>6</sup>

However, rigid theoretical differentiations are inappropriate for the current EU situation and in particular for CP:

‘It is quite misleading to suggest that the choice for the EU lies between “the” Community method and forms of “intergovernmental” cooperation. Already we can observe a great variety of community methods and a great variety of forms of cross-country cooperation, with the former shading into the latter and vice-versa, and with a range of different roles and responsibilities for European and national institutions within, as well as between, areas of economic policy.’<sup>7</sup> And further, ‘effective implementation of EU policy thus frequently depends not only on the explicit cooperation of various national and sub-national government bodies in the implementation of common policies, but also on their willingness to set up their own priorities and develop their own agenda in accordance with EU priorities, or to shape their local policies in the light of wider European reference points.’<sup>8</sup>

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<sup>1</sup> Hooghe, L. *Building a Europe with the Regions: The changing role of the European Commission*, in Hooghe, L. (ed) (1996) p. 89-128, discussed in Bache, I. *The Politics of European Union Regional Policy, Multi-Level Governance or Flexible Gatekeeping?* Sheffield, Sheffield Academic Press (1998) p.80-81

<sup>2</sup> *ibid*

<sup>3</sup> *ibid*

<sup>4</sup> *ibid*

<sup>5</sup> *ibid*

<sup>6</sup> Bache, I. *The Politics of European Union Regional Policy, Multi-Level Governance or Flexible Gatekeeping?* Sheffield, Sheffield Academic Press (1998) p.80-81

<sup>7</sup> *An Agenda For A Growing Europe: Making the EU Economic System Deliver* the so called Sapir Report; Report for the President of the European Commission, (July, 2003), chairman Sapir, A. Group members; Aghion, P, Bertola, G, Hellwig, M, Pisani-Ferry, J, Rosati, D, Vinals, J, Wallace, H. Sapir report

<sup>8</sup> Sapir Report (2003) p.125-126

### 8.1.2 HISTORY

The main funds which make up the SF available to countries and regions within the EU are the following: the European Regional Development Fund (ERDF), the guidance section of the European Agricultural Guidance and Guarantee Fund (EAGGF) set up 1962 to provide '... investment aid for a variety of measures to assist less favoured agricultural areas.'<sup>9</sup> The European Social Fund (ESF), set up in 1958 initially to help train and retrain workers who had been affected by restructuring of industry and to so improve their mobility;<sup>10</sup> the Financial Instrument for Fisheries Guidance (FIFG) and rather separately from the main SF, the Cohesion Fund (CF). When the ERDF began in 1975 it involved only 5% of the budget, now the SF and the CF are expected to take the largest proportion of the budget, even larger than that of agriculture which has traditionally absorbed the majority. At the beginning of the EEC there was little in the Rome Treaty about cohesion and it appears to have been accepted that it was a matter for the MSs to address,<sup>11</sup> however in the years in between, major changes occurred and the Maastricht Treaty made plain that '... strengthening economic and social cohesion has formally become one of the objectives of the European Union, alongside the establishment of the internal market and economic and monetary union.'<sup>12</sup> Economic and Social cohesion have steadily increased in importance since the beginning of the European project, but have also grown in difficulty to achieve as MSs with very different economic and social realities joined the EU.<sup>13</sup>

The UK was the main instigator in pushing for '... the establishment of a European Fund aimed at regional development purposes.'<sup>14</sup> The reasoning behind this demand was that the UK had to pay in considerable amounts into the budget and received little back from the Common Agricultural Policy (CAP). To be fair to the UK, creating funds to sweeten increased economic and industrial competition had a venerable history in the EEC. The CAP has been considered to have been part of the bargain that allowed the EEC to come into existence in the first place, a grand compromise which saw West Germany subsidise French farmers in return for gaining access for German industrial products to French markets. Indirectly of course the money paid to the farmers flowed into the French economy as a whole and no doubt assisted in its growth. Since the UK was not going to benefit from the CAP, rather the contrary, it required some immediate sweetener to outweigh the short term difficulties its economy would face; so in 1975 the ERDF was founded. The Commission had a strong ally in Germany, the main contributor in the 1970s, when seeking precise rules for the implementation of Regional Policy, an insisting on additionality and so the supranational element.<sup>15</sup>

Despite the tough economic situation for the main contributors, the recipient MSs like Italy and Ireland were prepared to '... sabotage the Paris Summit,' in 1974<sup>16</sup> unless the ERDF was set up and finally Chancellor Schmidt of Germany and others were not as willing to fight, and backed down at the prospect of any threat to the internal market and members possibly leaving, as seemed might happen with the UK in 1974 and the referendum.<sup>17</sup> The tough situation of the oil crisis did lead though to greater MS power over the fund and so the Commis-

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<sup>9</sup> See note 6 Bache, (1998) p.34

<sup>10</sup> *ibid* p.32

<sup>11</sup> Bollen, F; Hartwig, I; Nicolaides, P. *EU Structural Funds beyond Agenda 2000: Reform and Implications for Current and Future Member States* Maastricht, EIPA Publications (2000) p.14

<sup>12</sup> *ibid* p.13.

<sup>13</sup> *ibid*

<sup>14</sup> *ibid* p.14

<sup>15</sup> See note 6 Bache, (1998) p.43

<sup>16</sup> *ibid* p.41

<sup>17</sup> *ibid* p.41



sion dealing with it, leading to an '... intergovernmental "carve up" rather than one based on objective Community indicators.'<sup>18</sup> Something similar to the above occurred with the Iberian enlargement with an interesting addition, the old MSs, France, Italy and Greece were worried about seeing their share in the EAGGF diminish so a new fund was set up, the Integrated Mediterranean Programmes which enabled them to agree to the changes.<sup>19</sup> In fact Greece threatened to veto the enlargement in 1984 unless it received compensation.<sup>20</sup> Thus there was a sweetener for the new members and also the old. Each enlargement has seen funds being made available or new ones being created to allow all the members old and new to receive something. The presence of these sweeteners has been important in enabling enlargements to take place without old MSs blocking the admission of new ones, and new ones maybe creating problems when they join, the veto is still very much a reality in plenty of areas of EU legislative proceedings and where the veto is not present, often tacit agreements make it usually unlikely that one MS will be totally overruled. Not over surprisingly the Agenda 2000 negotiations in Berlin saw struggles over sweeteners, '... decisions on the structural fund allocations are caught in intense competition between governments to assist their domestic clients and to resist threats to their entrenched advantages from further enlargement.'<sup>21</sup> The Commission stated logic has generally been that, there are poorer regions which need assistance in order for the goals of economic and monetary union to be met.<sup>22</sup> The beneficiary MSs particularly favour this interpretation, as the Irish and Italian governments did in the 1970s, whereas Denmark considered that EMU would itself solve the regional problem.<sup>23</sup> The recipient MSs have consistently favoured a larger fund and the paying ones like West Germany with other MSs supporting a smaller one.<sup>24</sup>

The growing number of relatively poor MSs meant that there was an expanding coalition which could and did press for more SFs to be made available. They made very explicit linkages between increased economic competition and poorer regions losing out unless they were given compensation which would then help them to compete on an equal footing.<sup>25</sup> The Commission was not over surprisingly in accord with the position of the poorer MSs, after all a larger European Fund, which it would be in charge of, would be in its organisational interest. Other MSs were less happy but finally agreed on a chapter "Economic and Social Cohesion" being included in the 1987 SEA.<sup>26</sup> The link between the extension of the market and SFs was again underlined in the 1988 reforms to the SF, which included a call for the Funds to be doubled between 1987 and 1993; 'The timing of this doubling gives an indication of the intimate political link between the Structural Funds and the progressive establishment of the internal market.'<sup>27</sup>

There were reforms carried out in 1979, 1984 and 1988, which, as is the case with the policy, were highly politicized '... particularly in relation to the size and distribution of funds.'<sup>28</sup> The 1979 reforms were dominated by the MSs via the Council, but the European Parliament (EP) supported the Commission and strengthened its hand somewhat, at least where the amounts

<sup>18</sup> See note 6 Bache, (1998) p.52

<sup>19</sup> See note 11 Bollen; Hartwig; Nicolaides (2000) p.15

<sup>20</sup> See note 6 Bache, (1998) p.68

<sup>21</sup> Allen, (D. *Cohesion and the Structural Funds* in (eds) Wallace, H and Wallace, W. *Policy Making in the European Union* fourth edition (2000) Oxford, Oxford University Press p.244

<sup>22</sup> See note 6 Bache, (1998) p.37, 38. The Communication of the 1972 Paris Summit stressed this connection as did the Report on the Regional Problems in the Enlarged Community of 1973 and the Padoa-Schioppa Report of 1987 used extensively in the Delors 1 package

<sup>23</sup> *ibid* p.39

<sup>24</sup> *ibid* p.39

<sup>25</sup> See note 11 Bollen; Hartwig; Nicolaides (2000) p.16

<sup>26</sup> *ibid* p.16

<sup>27</sup> *ibid* p.17

<sup>28</sup> See note 6 Bache, (1998) p.57

were concerned.<sup>29</sup> The Commission succeeded in introducing 'non-quota' programmes which '... were designed primarily to develop new alternative economic activity in regions across the Member States affected by the decline of a dominant industry.'<sup>30</sup> The Commission introduced the idea of a 'programme contract' which was a bundle of initiatives aimed at dealing with concise regional problems; the Commission had greater control over the funds thus disbursed than it did over the rest which was handed out via rigidly controlled national quotas.<sup>31</sup> The programme contracts and the integration of the various funds ERDF, ESF, EAGGF were important steps for the future of the SF.<sup>32</sup> The 1984 reforms saw the Commission achieve less than it had hoped, with extensions of the non-quota regime and funds being paid directly to regional authorities and effectively sidestepping national authorities.<sup>33</sup> But the Commission's desire to extend the programme method, where all programmes '... would be required to set out clearly both objectives and anticipated results ...',<sup>34</sup> was agreed on only to a small degree. Whereas the Commission had wanted to make all ERDF funding liable to programming, with a split between Community programmes which the Commission would dominate and would '... directly serve Community objectives ...', and national programmes dominated by and drafted by national governments with regional actors involvement, also geared to the 'Community Interest'.<sup>35</sup> In fact only 20% of the ERDF were covered by the programmes and these were drawn up by the MSs with the involvement of the Commission.<sup>36</sup> In part the problem was caused by MSs which were receiving more funds from the pre non-quota regime opposing any reduction in their net receipts despite agreement '... in principle with the Commission's proposal for greater concentration of funding on the regions most in need, all but Germany argued they should have eligible regions.'<sup>37</sup> The 1984 reform meant a minor increase in Commission's powers much in line with the trend up until the reform, with the Commission's gains owed mainly to its '... agenda setting powers ...',<sup>38</sup> with the Council moderating or rejecting many of its proposals but accepting some as they were based on the Commission's '... expertise and information ...', which enabled it to gain the backing it needed in the Council.<sup>39</sup> Yet it can be said that until 1988 at least the ERDF was really '... a system of reimbursement ...', and not really geared to regional policy as such.<sup>40</sup>

The 1988 reforms had the goals of implementing four main principles: concentration of the funds where they were most needed; programming to ease administration and achieve coherence; partnership to involve sub-national authorities and additionality to keep the funds as an extra benefit to the areas concerned and not simply replacing national funds. The reforms saw the three funds ERDF, ESF and EAGGF put together under the general framework of SFs have been said to have resulted in '... institutional arrangements ...', which '... made significant advances in the direction of Multi Level Governance but that subsequent developments can be characterised as a reassertion of MS control.'<sup>41</sup> Multi Level Governance emphasises a decrease in 'monolithic' MS state power and an increase in that of the Commission. The reforms saw six priority objectives being singled out for the Funds. Objective 1 regions were those deemed to be most '... lagging behind',<sup>42</sup> and consisted of 21.7% of the EU popu-

<sup>29</sup> See note 6 Bache, (1998) p.57

<sup>30</sup> *ibid* p.56

<sup>31</sup> *ibid*

<sup>32</sup> *ibid*

<sup>33</sup> *ibid* p.59

<sup>34</sup> *ibid* p.61

<sup>35</sup> *ibid* p.60-61

<sup>36</sup> *ibid* p.62

<sup>37</sup> *ibid* p. 60

<sup>38</sup> *ibid* p.65

<sup>39</sup> *ibid* p.66

<sup>40</sup> *ibid* p.66

<sup>41</sup> See note 21 Allen, (2000) p.246

<sup>42</sup> See note 11 Bollen; Hartwig; Nicolaides (2000) p.17



lation and received 69.6% of the budget in the period 1989-1993.<sup>43</sup> The Commission had the discretion to decide which regions belonged under which objective, which improved its position.<sup>44</sup> Furthermore it gained control over 10 percent of the SF budget which would only be spent on truly EU measures.<sup>45</sup> So called multi-annual-integrated-programmes were introduced to replace the plethora of individual projects that had existed before and had led to inefficiency. The MSs submitted development plans to the Commission which then drew up a Community Support Framework (CSF) '... this framework set out the development strategy and priorities for action of the structural funds, their specific objectives and the financial contribution of the structural funds. The CSF was subsequently implemented through a series of operational programmes.'<sup>46</sup> Regional authorities were encouraged to become actively involved in the policy process in a partnership role, affecting both the '... design and implementation ...',<sup>47</sup> of the programmes; this was a major change. MSs were also required to co-finance the programmes and projects. Various Community initiatives (CIs) were introduced, which aimed to '... cover specific cross-national regional problems which slipped through the cracks of projects covered under other structural programming.' The Commission has almost total control over these funds and used them closely with regional authorities to 'garner' their support and alliance to '... help fend off criticisms from central governments,' and to get useful information.<sup>48</sup>

The 1988 reforms saw several trends emerge which the reforms aimed at addressing, in principle, the attitudes of the MSs had changed to the funds. A basic of Community activities is said to be that '... where there is greatest mistrust between the MSs then there you will see the most "common" policies,' this amounts to the MSs allowing the Commission maximum control over funds where they are least able to trust each other.<sup>49</sup> On the one hand the 1988 reforms saw the funds doubled and the Iberian enlargement increased the lobby for an extension of the funds, on the other it saw France join the UK and Germany as a '... net contributor ...',<sup>50</sup> for all three of the largest MSs efficiency and keeping a control over the level of Community spending was becoming a major issue.<sup>51</sup> These MSs were as a result more willing to allow the Commission more 'intrusion'<sup>52</sup> possibilities which before would have been unthinkable.

The 1993 reforms were largely a consolidation of the past achievements and took place against a different political and economic backdrop to those of 1988, '... growing unemployment and other economic difficulties within some northern Member States heightened concerns about the costs and the cost effectiveness of Community policies ...',<sup>53</sup> and '... subsequent problems involved in ratifying the treaty prompted concern over the progress and timetable for economic and monetary union.'<sup>54</sup> Basically the partnership principle was used to include economic and social partners and environmental issues were taken into consideration. The Maastricht Treaty granted the environment a full treaty base in line with the growing concern for and awareness of environmental issues in Europe; the new status of the environment and thus sustainable development therefore affected also SFs as it would increasingly do

<sup>43</sup> See note 11 Bollen; Hartwig; Nicolaides (2000) p.17

<sup>44</sup> Peterson, J and Bomberg, E. (1999), *Decision making in the European Union*, New York, St, Martin's Press

p.151

<sup>45</sup> *ibid*

<sup>46</sup> See note 11 Bollen; Hartwig; Nicolaides (2000) p.18

<sup>47</sup> See note 44 Peterson; Bomberg (1999) p.151

<sup>48</sup> *ibid* p.160-161

<sup>49</sup> Interviews with Commission Officials: DG REGIO

<sup>50</sup> See note 6 Bache, (1998) p.76-77

<sup>51</sup> *ibid*

<sup>52</sup> *ibid*

<sup>53</sup> *ibid* p.82 quoting Wishade (1996) p.48

<sup>54</sup> *ibid*

also in the area of the CAP. Furthermore adjustments were made to the administrative arrangements of the funds ' . . . the prior appraisal, monitoring and ex post-evaluation of the structural funds were strengthened, by requiring quantitative analysis of the measures undertaken . . . Member States have to maintain their public structural expenditure at least at the same level as in the previous programming period.'<sup>55</sup> The CF was created to assist the poorer MSs to achieve the EMU convergence criteria with a 3% of GDP public borrowing requirement; the Spanish government more or less forced the Council to agree to its creation with the threat of otherwise vetoing the Maastricht Treaty.<sup>56</sup> Spain ' . . . effectively doubled . . . , ' its receipts of EU funds from 1993-9.<sup>57</sup> It gained the support of the other major poorer MSs with the argument that more resources were necessary to deal with regional economic weaknesses than were currently available under the SFs.<sup>58</sup>

Despite the reforms as whole being considered as a consolidation of the past, the Commission lost the momentum that it had previously generated which positively emphasised its role as policy initiator in the EU. As a whole ' . . . the 1993 reform represented a reassertion of national government control in key areas,'<sup>59</sup> the partnership principle was now subject to a clause which allowed the MSs' discretion as to the selection of partners.<sup>60</sup> The CF was largely outside the SF policy framework and MSs allowed the Commission little discretion in its operation.<sup>61</sup> A management committee was also set up to monitor CIs which allowed the MSs a greater role than they had previously enjoyed.<sup>62</sup> 'Access points . . . , ' for the Commission and the sub-national authorities to meet were reduced via ' . . . streamlined programming options,' but at the same time the reform saw the power of the Commission as an 'arbiter' increase, as the Commission could choose between larger numbers of possible regions to fund.<sup>63</sup>

During the period subsequent to the 1993 reforms a number of deficiencies in the SF policy became apparent, which combined with the expected difficulties of the major enlargement east to create a pressure for more reforms. The funds were too widely spread and therefore not concentrated on the areas most needing them and failing to address this point left the policy vulnerable to allegations of its lack of effectiveness. Implementation of the SF was perceived to be over complicated and the solution was to clarify and improve the definition of the ' . . . roles and responsibilities . . . , '<sup>64</sup> of all those working as actors in this area.<sup>65</sup> The funds were furthermore being put to use at an astonishingly low level mostly as a result of implementation delays; MSs had difficulties with the co-financing requirements and the lengthy negotiations involved in getting the necessary funding elements in place.<sup>66</sup> In addition, the main contributing MSs as well as the poorer ones were affected by constraints set by the EMU convergence criteria which affected their budgetary decision-making scope considerably.<sup>67</sup> Finally, the contributing countries strengthened by the new Scandinavian MSs, increasingly demanded that inefficient usages of Community funding should stop, and Germany and the Netherlands amongst others were reluctant to accept the level of payments that they were expected to make.<sup>68</sup>

<sup>55</sup> See note 11 Bollen; Hartwig; Nicolaides (2000) p.21

<sup>56</sup> See note 6 Bache, (1998) p.88-89

<sup>57</sup> See note 44 Peterson; Bomberg (1999) p.153

<sup>58</sup> See note 6 Bache, (1998) p.88-89

<sup>59</sup> *ibid* p.90

<sup>60</sup> *ibid* p.91

<sup>61</sup> *ibid*

<sup>62</sup> *ibid*

<sup>63</sup> See note 44 Peterson; Bomberg (1999) p.161-162

<sup>64</sup> See note 11 Bollen; Hartwig; Nicolaides (2000) p.24

<sup>65</sup> *ibid*

<sup>66</sup> *ibid*

<sup>67</sup> *ibid* p.26

<sup>68</sup> *ibid* p.26



The decentralisation of the policy began and allocated to the MSs the main role in implementation whilst ensuring that they were accountable for it to the Commission, '... the role of the Commission will be limited to strategic programming, ensuring the respect for Community priorities and verifying the results through monitoring, evaluation and financial control... the Commission will also be involved in the decision on the allocation of the appropriations that have been put in the performance reserve.'<sup>75</sup> Attempts at securing the involvement of a range of sub-national and economic and social actors throughout the complete policy cycle, floundered on the rock of MS opposition as did the proposal of the Commission to strengthen the part played by the monitoring committees, finally it was only allowed an advisory part in these.

Contrary to goals of concentrating the ever tighter funds more carefully to 'objectively identified problems' and consistently applying 'the eligibility criteria' the Council decided on a rubric of providing financing for 'particular situations' which appears to allow great discretion to the actors involved at the expense of the goals of simplification and rationalisation to raise effectiveness which the Agenda 2000 aimed at achieving; this development was described as 'worrying.'<sup>76</sup> All in all the Agenda showed the problems of adjusting the SFs, even in the face of a major challenge to them in the form of the enlargement. Powerful MS actors were more than able to defend themselves against the Commission and to ensure that their views were able to dominate. The CI budget was reduced from 9% to 5% of the structural fund budget, the number of CIs was reduced and '... the role of monitoring committees increased.'<sup>77</sup>

### 8.1.3 PRACTICE

At first when the policy was developed the MSs had a strong hand; the Commission could approve projects submitted by national governmental departments which were then submitted to the fund management committee made up of MS representatives and chaired by the Commission. A Regional Policy committee was created with two representatives from each MS and one from Commission and its task was to coordinate national regional policies and set framework for regional policy in community. 50% of funds had to be supplied by MSs anyway, so a lot of cooperation with Commission was necessary.<sup>78</sup> There was therefore a mixed picture, and partnerships with MSs were inevitable even encouraged and the Commission often chaired these, like in a network. Since the main contributing MSs did not win out, in terms of limiting the growth of the policy, one must assume that the recipient ones had more influence in this area and no doubt this is still the case.

As the history of the policy shows, the Commission performed a catch up role with the policy and under Delors took the lead, but always the MSs have been able to modify and direct the funds in their favour. The positions taken by certain MSs and or groups of them often in close alliance with the Commission are indicative of the resulting policy. The minimal role of the European Parliament and the presence of the unanimity voting procedure have left the Commission very dependent on two main factors, the personality of the president and the ability to offer something to everyone as only one vote against is enough to put a stop to any proposal. Whilst the Commission has the power of policy initiation and drafting the initial proposal, from then on the Council is decisive. That means that at the crucial period when the new five to seven year budget and thus the multi annual perspective plan's main principles and details

<sup>75</sup> See note 11 Bollen; Hartwig; Nicolaides (2000) p.41

<sup>76</sup> *ibid* p.45

<sup>77</sup> See note 44 Peterson; Bomberg (1999) p.161

<sup>78</sup> See note 6 Bache, (1998) p.42

The result was the Agenda 2000 process which began with the Commission document of the same name which addressed both the enlargement and EU finances for the period 2000-2006. Thus, as before, another enlargement was entwined with SF negotiations and struggles between the MSs themselves and between the MSs and the Commission. In general the Commission's proposals '... seemed intentionally to suggest a status quo, thereby downplaying the anticipated costs of the next enlargement in order to ensure continuing support of the MSs for the enlargement process.'<sup>69</sup>The Berlin agreement of 1999 looked rather different. Whereas the Commission requested 286 billion Euros for the structural area it received 220-260; MSs gained 195 from SFs and 18 from the CF.<sup>70</sup>The NMSs were allocated 1 billion per year via the ISPA fund, 'Instrument for Structural Policies for Pre-accession,' with these states finally receiving funding from the SFs themselves to the tune of 12 billion by 2006.<sup>71</sup>No MS would be allowed to exceed funds in excess of 4% of their GDP and '... the resources that will go to the New Member States will remain considerably below this 4% ceiling ... In theory, the NMSs with the highest income levels would receive more financial assistance than those with the lowest income level, which would obviously contradict the fundamental aims of the cohesion policy.'<sup>72</sup>This point was stressed as well by other influential organisations, '... the total receipts of new members after accession are capped at 4% of their GDP. This ensures that they can absorb transfers and keeps costs in check, but it has the perverse outcome of giving more money to richer countries (which have a larger GDP), and giving them more money as they grow.'<sup>73</sup>The sums stated here are: NMSs by 2006 would receive 225 Euros per head, Portugal and Greece 400 Euros per head. This goes against the 'principle of fair treatment' but the European Round Table of Industrialists report expects, '... the applicants have little bargaining power and so may not gain full access to EU funds for some time.'<sup>74</sup>

The Commission further proposed various measures aimed at simplifying and rationalising the system; these included reducing the seven objectives under which funding was allocated to just three; reducing Community Initiatives from 13 to 3 and finally concentrating the funds on 35-40% of the Union's population rather than the 51% which it was presently serving. The first two points were largely agreed upon with the minor modification of an additional CI to the three the Commission wanted. However, with the 'simplification' of the objectives, it appeared to have been a somewhat empty exercise as it amounted to little more than a rearrangement of the objectives with no real changes in their '... actual scope ...,' and resulted in the creation of '... a rather heterogeneous mixture of issues covered by the various objectives.' The last point however, saw MSs flexing their political muscle and once more defended their share of the funding; only in 2006 will there actually be a reduction in the percentage of the population receiving the funds. Germany, Spain and Italy remain '... in absolute terms ...,' the main beneficiaries of SFs and received together more than 50%. However in 'per capita terms' the former four cohesion countries received the most. The Commission had also favoured the creation of an implementation incentive for the MSs in the form of a 'performance reserve.' Had the idea been fully accepted, 10% of the available funds would only have been granted half way through the programming period if the Member State concerned have adequately implemented the fund programme. The Commission would have wielded some discretionary powers in this scheme, however the MSs had this amount reduced to 4% and this was broadly at the discretion of the MS concerned.

<sup>69</sup> See note 11 Bollen; Hartwig; Nicolaidis (2000) p.29

<sup>70</sup> *ibid* p.30

<sup>71</sup> *ibid* p.30

<sup>72</sup> *ibid* p.31

<sup>73</sup> ERT (European Round Table of Industrialists) *The European Challenge* message to the spring European Council March 2003 p.32

<sup>74</sup> *ibid*



are being worked out there is a lot of political tension.<sup>79</sup> Generally speaking, the device of the plan is clever insofar as during the period of the plan, apart from the beginning, there is a relative lack of discord.<sup>80</sup> Prime Ministers are very aware that they will be expected to defend their countries' interests and of ' . . . vigilant domestic media, interest groups and opposition parties watching his every step.' The pressure is present to ensure that each of the MSs comes out with some reward and victory.<sup>81</sup>

As mentioned earlier, the policy has consistently been used as a flexible support for other policies and as a *general lubricant in decision making in the Union*, 'in the evolution of the European Union, there have been many occasions on which speedy action in new priority areas has been possible only through the flexible recourse to these funds.'<sup>82</sup> Liberalizing markets and opening them to competitive pressures often from more dynamic economies is tough in the short term for poorer MSs, whatever gains they see in the long term. SFs have served the worthwhile task of enabling greater economic integration by side-payments,<sup>83</sup> as the following quotation emphasizes, 'From its very outset, this policy area has been a haven for side payments related to other aspects of European integration.'<sup>84</sup> One senior Commission official stated quite candidly 'Let's be clear, the cohesion fund was the price for EMU, just as Structural Funds were the price for the single market.'<sup>85</sup> The cohesion fund was the price for EMU, and a ' . . . prize given to poorer Member States in return for their endorsement of further enlargement.'<sup>86</sup> The same has occurred with the CAP, with there being a 'strong link' between the two policies with the CP serving as a flexible alternative to the more rigid CAP.<sup>87</sup> The earlier enlargements of the Community also required rigid efficiency centered CAP, which was inappropriate for the UK, Spain and Portugal, to be complemented by SFs.<sup>88</sup> The case of Poland illustrates this, during the enlargement negotiations Poland stated that it disagreed with its allocated milk quotas, the old MSs were unwilling to offer more CAP assistance but instead offered assistance ' . . . within the Polish envelope available from the structural funds.'<sup>89</sup> The Monetary Union and the concerns of poorer states led to doubling of the structural policy resources and the Edinburgh Summit led to the cohesion funds being created largely for the same reasons.<sup>90</sup> MSs have had a crucial role to play in the CP since its inception, 'The cohesion fund was also the result of a familiar two stage bargaining process . . . This two stage bargaining process illustrates a wider tendency in EU decision making: a basic deal is agreed, but "sequentially implemented for reasons of decision making efficiency."<sup>91</sup>

The positions of the MSs are to a degree decided by or heavily influenced by their sub national authorities; this is particularly true of federal states like Germany, Belgium and Austria where the *Länder* have considerable rights and often quite different views to the federal government. Within Germany different blocs of *Länder* take different positions with regard to the CP, the eastern and western *Länder* benefit from the policy whilst the southern do not. The

<sup>79</sup> Tarschys, D. *Reinventing Cohesion: The future of European Structural Policy* Report 17, Swedish Institute for European Policy Studies, September (2003) p.9

<sup>80</sup> *ibid*

<sup>81</sup> *ibid*

<sup>82</sup> *ibid* p.84

<sup>83</sup> *ibid* p.25

<sup>84</sup> *ibid* p.19

<sup>85</sup> See note 44 Peterson; Bomberg (1999) p.153

<sup>86</sup> *ibid* p.151

<sup>87</sup> See note 79 Tarschys, (2003) p.30 'Second, there is a strong link between Structural Policy and the CAP. Where the CAP is difficult to adjust because of all the intricate trade-offs that have gone into constructing it, Structural Policy is all the more adjustable and can therefore readily be used as a counterweight balancing skewed measures of compensation in the agricultural field.'

<sup>88</sup> *ibid* p.23

<sup>89</sup> *ibid* p.19

<sup>90</sup> *ibid* p.26-27

<sup>91</sup> See note 44 Peterson; Bomberg (1999) .p.153

federal government has to take into consideration such differing positions in its own positioning in the Council and also in general negotiations.<sup>92</sup> Owing to some degree of devolution other states like the UK, Spain and Italy, likewise have to take into consideration the views of their regions and local authorities which are receiving support from the funds.<sup>93</sup> MSs are also influenced by developments in other sectors which can be affected by the CP in the broadest sense, for example on state aids, and this will affect their stance in CP negotiations.<sup>94</sup> It is likely that sub national and economic and social actors affected by such developments will give input to their governments.

There are strong vocal 'constituencies' and support for the CP,<sup>95</sup> which the Commission is capable of 'mobilising,' as the following quotation illustrates, 'While strong interests are now being mobilised for the continuation of Structural Policy in its present form,'<sup>96</sup> as part of its '... defending and protecting ...,' its turf.<sup>97</sup> DG REGIO like its counterpart DG AGRI reacted very strongly to the Sapir Report, discussed later, and the recommendations to reform the budget, that it seemed clear they were supporting their turf and no doubt also fighting for their institutional survival:

'Within days of the publication of the report, the Commissioners of Agriculture and of Cohesion condemned the recommendations, in particular on the budget. Clearly, their disagreement is a pure case of protection of turf and/or power, rather than the outcome of a reflection on what would be best for EU growth in the longer run. Since the Union's public interest is captured in the latter, a reform of the budget should be embraced rather than shot down, even if this requires an overhaul of today's powers or assignments. At the same time it demonstrates how hard progress will be on this dossier.'<sup>98</sup>

From this perspective, the subsequent mobilization of interests supporting the DG and the funds, as opposed to the good of the EU as a whole and the Commission, has to be viewed with suspicion. The Commission can maybe be stated to be mobilizing its networks to resist reform, the subsequent success that they appeared to be having, so far, is reflective of the strength of the network at the DG's disposal. One particular constituency of importance is that of the various groups of MSs which are '... supportive of the particular programmes aimed in their own direction.'<sup>99</sup> France, Finland, Germany, Greece, Italy, Portugal and Spain are said to support the SFs for their '... tangible expression of solidarity ...,' and Austria, Belgium, France, Greece, Portugal and Spain value the policy's '... positive impact on regional development.'<sup>100</sup> In particular Spain has championed the cause of continuing SFs and predicated its willingness to discuss and agree on other issues with agreement by the other MSs that the basics of the funds remain unchanged.<sup>101</sup> Germany and Spain are frequently direct dialogue partners in discussions about the funds, traditionally the former has been the Community pay master and the largest economy geared to exports and the latter has received considerable fi-

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<sup>92</sup> Bachtler, J and Wishlade, F *Searching for Consensus: The Debate on Reforming EU Cohesion Policy*, European Policy Research Centre Paper No.55, Glasgow, University of Strathclyde (2004) p.40

<sup>93</sup> *ibid* p.41

<sup>94</sup> *ibid*

<sup>95</sup> See note 79 Tarschys, (2003) p.79 quoting Bachtler, J. & Taylor, S., *The added value of the Structural Funds: A regional perspective*, IQ-net report on the reform of the Structural funds, Strathclyde University 2003.

<sup>96</sup> *ibid* p.18

<sup>97</sup> *ibid* p.15

<sup>98</sup> Pelkmans, J and Casey, J. *Can Europe Deliver Growth? The Sapir Report and Beyond* Brussels, CEPS Policy Brief 45 (Jan 2004)

<sup>99</sup> See note 79 Tarschys, (2003) p.78-79

<sup>100</sup> *ibid* p.78-79

<sup>101</sup> *ibid* p.26,27



nancial support.<sup>102</sup> The EP is strongly supportive of the CP as are the Committee of the Regions and the European Economic and Social Committee.<sup>103</sup>

There is a surprisingly low level of demand for the CP, and in particular the SFs. This is owing to their complex bureaucratic requirements, as shown by the mid term reviews. Monitoring is said to be the most serious element of this. Sometimes the measures on offer seem unfavorable compared to similar national ones on offer<sup>104</sup> let alone the CAP, 'In contrast with expenditure of the CAP, where payments from the fund are largely determined by formula, there is a substantial discretionary element in the spending of the structural funds. Taking full advantage of the structural funds is a labor-intensive exercise for Member States, both for the technocratic standards projects are expected to match, and because of the extensive co-ordination required to satisfy the partnership principle.'<sup>105</sup> The Commission's position as expressed in the Third Report on Economic and Social Cohesion is that even more monitoring is going to be required combined with ' . . . more results-oriented evaluation and potentially new reporting requirements to enable assessment of progress under the new national and EU strategies. . . . '<sup>106</sup> Furthermore the so called n+2 rule which requires funding to be disbursed within two years or it is de-committed and returned to the budgets of the contributor states<sup>107</sup> is to be retained. This despite the fact that the measure whilst encouraging the recipients to spend their funds rapidly also is said to ' . . . compromise the quality of spending.'<sup>108</sup>

## 8.2 COHESION POLICY CRITICISED

### THE SAPIR REPORT AND OTHER CRITICAL VOICES

Criticisms have been addressed at the CP for a long time, as early as 1996 a MS official was voicing his and others' doubts about the efficacy of the policy and that it might be retarding 'economic dynamism.'<sup>109</sup> In 1998 the EP reporting on the financial period 1994-1999 was critical of the funds ' . . . is far too complex and must be simplified, MEPs declared . . . poorly targeted and seriously underspent. MEPs were especially critical of the Commission's inability to keep track of the money once it had been sent to the member states.'<sup>110</sup> Other voices were raised about the policy itself in 2003, with a Portuguese economist worrying ' . . . that structural aid may have a corrupting effect . . . ,'<sup>111</sup> and a ' . . . senior Greek official in Brussels . . . 'The best thing the EU could do for Greece is to cut off the structural funds immediately", he says. "They're turning Greece into Europe's Mezzogiorno. Anybody who works hard at a regular business is regarded as an idiot . . . "'<sup>112</sup> And others have also been critical of the economic effect of the funds.<sup>113</sup> The problem is also a Brussel's political one, according to the Economist 'No academic study, though, is likely to have much effect on the structural funds industry. Those in Brussels who strive to promote the Union know that EU-financed

<sup>102</sup> See note 79 Tarschys, (2003) p.25 quoting Ross, G., *Jacques Delors and European integration*. Oxford: Polity Press, 1995.

<sup>103</sup> *ibid* p.80

<sup>104</sup> See note 92 Bachtler,; Wishlade (2004) p.51

<sup>105</sup> Boldrin, M and Canova, F. *Regional Policies and EU enlargement* International Macroeconomics, Centre for Economic Policy research paper no.3744.(2003) p.34-35

<sup>106</sup> See note 92 Bachtler,; Wishlade (2004) p.51

<sup>107</sup> Final A6-0177/2005 Interim report on the proposal for a Council Regulation laying down general provisions on the European Regional development Fund, the European Social fund and the Cohesion fund COM(2004)492. 02.06.2005 p.10

<sup>108</sup> See note 92 Bachtler,; Wishlade (2004) p.51

<sup>109</sup> European Voice Vol 2 No 29 1996, *EU enlargement weighs heavy on regional budget*

<sup>110</sup> European Voice Vol.2 No.33 12.09.1996 4-5 September European Parliament.

<sup>111</sup> The Economist, *Drowning in a sea of structural funds?* March 27 2003.

<sup>112</sup> *ibid*.

<sup>113</sup> *ibid*

programmes are among their most effective propaganda instruments. And what national politician can resist the temptation to trumpet a big new spending programme, particularly if it is other countries' taxpayers who are footing the bill.<sup>114</sup>

The debate about the future of the CP is said to have really got underway in 2001 with the Commission's adoption of the Second Report on Social and Economic Cohesion.<sup>115</sup> It was followed up by a large Commission forum on Cohesion and then the 'General Affairs' Council met in June 2001. Spain, in particular, expressed concern about the effects of enlargement on 'economic and social cohesion'. It should be stated here that Spain and Portugal will lose most from changes in the allocation of the SFs and CFs as a result of the enlargement east and also, owing to their geography, see less gains made as a result of increased trade.<sup>116</sup> A flurry of activity and reports followed with the EP passing several resolutions<sup>117</sup> as well as the Committee of the Regions<sup>118</sup> and the European Economic and Social Committee.<sup>119</sup> Against the backdrop of economic recession and tighter budgets the so called group of six submitted a letter to the Commission which stressed the point of view of the main contributors and their desire to see Commission spending reformed and reoriented. The basic views of the contributors were captured quite neatly in the words of Ambassador Petersson of Sweden. His view and that of Sweden was that a new approach was necessary in the allocation of SFs. According to him, current SFs within the European Commission budget were unfairly going to certain 'older' countries and should be phased out more quickly. Among the then 15 MSs, Spain, Portugal and Greece should only receive funds for regions that were below the threshold of 75% of total national income.<sup>120</sup>

But more crucially the Commission President established an Independent High Level Study Group to report on making, 'An Agenda for a Growing Europe'; this was the so called Sapir Report. The group contained individual leading experts in the European Policy analysis field like Helen Wallace. Before going into the report in greater depth it can be said that the then current CP set up and justification of it were seen to be inappropriate and inadequate for the goals and needs of the EU. The 2003 report appears to have come out of the blue to the officials in DG REGIO and to have been perceived by them to be a major threat to their very existence.<sup>121</sup> The effect of the report was to create a sense of crisis in the DG with hasty meetings held to draft an effective response to the Sapir report.<sup>122</sup> Some officials spoke about the 2007-2013 negotiating period for the CP as if were a mere possibility and Commission officials outside the DG emphasised that this was the case.<sup>123</sup> It was certainly a major reason for the tone and response found in the 2004 Third Report on Economic and Social Cohesion. Some of the officials involved in drafting the response considered that they had adequately

<sup>114</sup> The Economist, *Drowning in a sea of structural funds?* March 27 2003.

<sup>115</sup> The Third Report on Economic and Social Cohesion (2004) *A New Partnership for Cohesion* Belgium, European Communities, p. 176

<sup>116</sup> Hughes, J; Sasse, G; Gorron, C. *Conditionality and compliance in the EU's Eastward Enlargement: Regional Policy and the Reform of Sub-national Government*. Journal of Common Market Studies Volume 42, No 3 (2004) p.529

<sup>117</sup> EP Resolution on the Schroedter Report (2002); EP Resolutions on the Mastorakis Report and the Pomes Ruiz Report (2003)

<sup>118</sup> Committee of the Regions: The Schneider Report and the Joint Outlook Report of Mr Fitto and Mr Cauwenberghe (2003)

<sup>119</sup> European Economic and Social Committee: The Barros-Vale Report and the Dassis Report, (2003)

<sup>120</sup> Hoag, J. *How can the Future EU Budget be limited to 1% of GDP? The View of the Gang of Six*. (09 January 2005) Speaker: Sven-Olof Petersson, Permanent Representative of Sweden to the EU Chairman; Staffan Jerneck, Director of Corporate Relations, CEPS. Ambassador Petersson began his presentation by emphasizing that he was speaking only on behalf of Sweden and did not represent the other members of the group of six nations: Germany, France, Britain, Austria and the Netherlands

<sup>121</sup> Interviews with Commission Officials: DG REGIO

<sup>122</sup> *ibid*

<sup>123</sup> *ibid*



defended their policy and thus DG.<sup>124</sup> Not overly surprising the report sparked off several other reports and articles on the CP of a critical nature.

The Sapir Report primarily addresses the economic situation in Europe and the need for change at every level to restore growth to the continent and so secure the system of social security which the continent has enjoyed to date. It was the spectre of continued lack of growth which seemed to dominate the report, and economic growth was the measure of all the policies and their effectiveness. Interestingly, the report authors stated that they were asked to use the Padoa-Schioppa Report of 1987 as an inspiration. This report was used by Delors as he set out to organise the 1988 reform of the SFs. It stressed the; '... serious risks of aggravated regional imbalances in the course of mark liberalization,'<sup>125</sup> and effectively justified the need for the strengthening of the funds to balance out and allow for the greater integration of the single market. The Sapir Report authors stated that Euro-Sclerosis led to the Single Market Programme and the Padoa-Schioppa Report and that the present Lisbon process led to their present report.<sup>126</sup> With regards to CP the report stresses the growing size of its proportion of the budget; in 1988 Agriculture took 60% of the budget and SF 17%; in 1992 it was 52% and 27%; in 1999 45% to 35% and according to DG REGIO officials soon the SF will exceed Agriculture.<sup>127</sup> In 1988 1.15% of Community GDP was taken by the budget; in 1992 it was 1.20%; in 1999 it was 1.27%.<sup>128</sup> 90% of the EU budget is financed from national payments from treasuries rather than from VAT and taxes '... levied on EU wide fiscal basis.'<sup>129</sup> This is quite different to the situation which had existed earlier in the history of the CP where VAT receipts had been considerably higher.

In particular the resources of the Commission are criticised, '... the Commission should have its resources extended to provide high-quality and well-focused advice and processing of grants.'<sup>130</sup> This is repeated later in the report with, '... the staffing of the Commission needs to be reinforced to provide absolutely first class expertise in all core policy areas that we have discussed in this Report, as well as a deep understanding of the situations in each of the Member States, especially in the light of enlargement. This implies enabling the Commission to hire experienced professionals instead of assessing abilities and skills on the basis of a uniform recruitment procedure.'<sup>131</sup> The call is for a 'leaner Commission' ready to tackle the strategic tasks which are considered to be its 'primary purpose.'<sup>132</sup> This is reminiscent of the strategic policy group style Commission that Monnet envisaged when he laid his plans in the 1950s. It is also similar to his Commissariat du Plan mentioned in chapter 1. And; 'a radical change in budgetary procedure towards: more ex post evaluation of expenditures based on meeting criteria specified ex-ante; devolution of responsibility for budget execution to relevant local, national or EU actors; qualified majority voting for the adoption of the multi-annual budgetary guidelines.'<sup>133</sup> Several of the recommendations like this which were made in the report are found in the Commission proposal for the new regulation.

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<sup>124</sup> Interviews with Commission Officials: DG REGIO

<sup>125</sup> Dinan, D (ed) *Encyclopedia of the European Union* (2000) London, Lynne Rienner Publishers p.47

<sup>126</sup> See note 7 Sapir Report (2003) p.20

<sup>127</sup> *ibid* p.19-20

<sup>128</sup> *ibid* p.19

<sup>129</sup> *ibid* p.162

<sup>130</sup> *ibid* p.105

<sup>131</sup> *ibid* p.158

<sup>132</sup> *ibid* p.158

<sup>133</sup> *ibid* p.165-66

### 8.2.1 CRITICISM OF THE ‘CONVERGENCE’ OBJECTIVE; AND FURTHER ‘ECONOMIC CRITICISM’

The objective of convergence of the DG is stated as follows, ‘the “convergence” objective concerns the less developed MSs and regions which in accordance with the Treaty are the top priority for CP. The Treaty calls for a reduction in disparities between ‘... the levels of development of the various regions and the backwardness of the least favoured regions or islands, including rural areas (article 158) ... This objective concerns, first and foremost, those regions, whose per capita GDP is less than 75% of the Community average. The key objective of cohesion policy in this context would be to promote growth-enhancing conditions and factors leading to real convergence. Strategies should plan for the development of long-term competitiveness and employment.’<sup>134</sup> The Sapir Report is most critical about the ‘... predominantly regional focus of cohesion policy ...’, which ‘... generates two results ... a. All Member States, except Luxembourg and Denmark (and Belgium and Netherlands from 2007) have at least one region receiving financial aid under objective 1.’<sup>135</sup> The second result is that whilst economic convergence has occurred between MSs, the regions which have been primarily targeted by the policy to date have suffered the opposite fate, ‘Inequality within each country accounted for roughly half of total EU regional inequality in the early 1980s, but this rose to about two thirds by the mid 1990, while inequality between countries fell by about a third during that period,’ i.e. there has been ‘country convergence’ and ‘regional divergence.’<sup>136</sup> Furthermore the GDP data simply is not sufficient to conclusively prove that the CP necessarily affected the areas concerned and whether or not the areas might have seen similar changes in the GDP resulting from other factors.<sup>137</sup> Other authors have added that the disparities had been ‘over-stated,’<sup>138</sup> as a result of ‘double-counting,’ and that how the disparities decreased remained to some extent a mystery owing to the inevitable complexity surrounding such economic developments, but the role of the EU CP was likely to be minimal. The very notion of there being a useful connection between convergence and cohesion was also questionable.<sup>139</sup><sup>140</sup> Studies that have been made seem rather inconclusive where ‘... relatively simple models with only a few variables tend to hint at a stronger influence than more complex models integrating different types of secondary effect.’ And the objectivity of the studies

<sup>134</sup> See note 107 Final A6-0177/2005 Interim report on the proposal for a Council Regulation p.4

<sup>135</sup> See note 7 Sapir Report (2003) p.57

<sup>136</sup> *ibid* p.59

<sup>137</sup> *ibid* p.60

<sup>138</sup> See note 79 Tarschys, (2003) p.82-83 ‘...the problem at the outset is defined as a range of wide disparities between the poor and the wealthy parts of the European Union. Convergence implies a reduction of these gaps, which will in turn lead to a greater cohesion in the Union. Chapters 3 and 4 have indicated a number of disputable points in this standard analysis. In the first place, there are reasons to contend that *the gaps in European living standards have long been overstated* and that the problem to be dealt with is therefore less serious than generally believed, at least within the EU15. At the heart of this flaw is a well-established practice of duplication or “double counting”. In spite of the emphatically asserted principle of additionality, implying that EU contributions should come on top of national efforts and under no circumstances replace them, the design of EU Structural Policy disregards the very extensive redistribution carried out by the Member States through regulation, taxes, transfer schemes and public consumption. Accordingly, the Union tries to achieve once again what has already been at least partly achieved through national policies’.

<sup>139</sup> *ibid* p.83 ‘A second problem is connected with *the place of convergence in the Structural Policy discourse*. In spite of much research and theorising in several disciplines, we do not know exactly how reduction in disparities comes about and how growth processes between different areas interconnect. But there are strong indications

that convergence is a long, drawn-out evolution influenced by many different factors, including cultural preconditions, national policies and the size and vitality of markets. The contribution of Structural Policy interventions to convergence appears to be relatively limited and is at any rate difficult to assess within the short time span of the separate perspective plans. If the specific and concrete products of Structural Policy are easy to measure, its aggregate impact is much more intractable to evaluation and analysis. The pursuit of convergence as a policy goal is by all appearance a rather thankless enterprise’

<sup>140</sup> *ibid* p.82-83 ‘Though sometimes confused or understood as analogous and interconnected objectives, they are more often portrayed as two distinct steps in an integrative process. In the generally accepted diagnosis, the problem at the outset is defined as a range of wide disparities between the poor and the wealthy parts of the European Union. Convergence implies a reduction of these gaps, which will in turn lead to a greater cohesion in the Union’.



and which are chosen as such depends on the position taken, 'Not surprisingly, the European Commission appears more prepared to trust studies indicating a greater impact.'<sup>141</sup>

Economic theory can also throw some light on the CP. Those in favour of the policy tend to support 'agglomeration theories' and "' . . . new growth" or "new trade" theories. . . .'<sup>142</sup> These latter theories state that more ' . . . trade openness combined with increasing returns and a variety of external effects will produce agglomeration phenomena, poverty traps, economic divergence and increased inequality. Hence, when differently endowed countries start trading with each other, the richer or more advanced one "wins" while the other loses.'<sup>143</sup> Agglomeration theories ' . . . predict that capital and labor move toward where their complementary factor of production is more abundant, thereby leading to a concentration of economic activity in a few privileged areas and leaving the rest far behind. Hence the need for active public intervention to prevent factors (especially labor) from moving around too much and for subsidizing economic activity in poorer areas where it would not, otherwise, take place.'<sup>144</sup> Obviously those working in the area of regional support as DG REGIO does will take this theory as being justification for their work, 'Unfortunately, when looking at convergence data there is a strong tendency to see what out personal prejudices would like them to show. It is for this reason, we believe, that in spite of all the evidence to the contrary, the "agglomeration" hypothesis seems to be more popular than ever. Research produced at or around the European Commission, especially the Directorate for Regional Policies, is an excellent example of this phenomenon.'<sup>145</sup> However the following is stated to be the case, "'new growth" or "new trade" theory models are comfortably rejected by the data . . .,' and 'We are not aware of any historical experience of trade integration showing support for this kind of predictions. In fact, all recorded episodes of increased trade openness, at the national or international level, have generated the opposite outcome: poorer areas have either strictly gained . . . on the leader or have kept distances roughly constant.'<sup>146</sup>

It appears that an array of assumptions are involved in linking convergence to cohesion which should have to been separated to arrive at a more coherent route to cohesion. Cohesion is seemingly used by DG REGIO in a rather vague manner and can cover a wide range of things and the policy should change to match it.<sup>147</sup> Arguably the current definition is too broad and this does not help the DG target its scarce resources optimally. The Sapir Report recommends that a convergence policy remain but that it should ' . . . focus on countries, rather than regions.'<sup>148</sup> Another solution proffered is to abandon the overt convergence objective altogether, 'A third option, to be outlined in the following section, would be to undertake radical internal reforms within Structural Policy by downgrading or even abandoning convergence as a policy objective, and making cohesion the principal purpose of policy interventions. This would imply a discontinuation of certain elements in the present policy package but a continuation and development of others. Above all, it would imply the suppression of subsidies aimed at satisfying exclusively local needs in favour of projects and programmes having a clear trans-

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<sup>141</sup> See note 79 Tarschys, (2003) p.52-53

<sup>142</sup> See note 105 Boldrin; Canova (2003) p.26

<sup>143</sup> *ibid* p.26

<sup>144</sup> *ibid* p.26-27

<sup>145</sup> *ibid* p.27

<sup>146</sup> *ibid* p.26-27

<sup>147</sup> See note 79 Tarschys, (2003) p. 84 'A third issue is *the moot relationship between convergence and cohesion*. The increased sense of community needed to strengthen the European identity as well as the democratic functioning and the legitimacy of the European Union require efforts in and the legitimacy of the European Union require efforts in many different areas, but a very limited segment of these is in effect addressed by the putative cohesion policy of the European Union. While convergence may have some role to play in attaining this goal, it is certainly not the only route leading in this direction and neither the most cost-effective one. A cohesion policy worth its salt would have to be based on a much broader analysis of the issue and encompass investments targeted also towards political and cultural objectives.'

<sup>148</sup> See note 7 Sapir Report (2003) p.146

national or European dimension.<sup>149</sup> Despite the fact that the Commission supported projects are clearly labelled as such, there is a sense that the Commission is missing out on really choosing and planning projects which are very much Union oriented rather than local subsidies for local concerns which lack this dimension and so ‘ . . . boost to the sense of community and shared fate.’<sup>150</sup>

At least one pair of authors have used ‘ . . . a simple econometric exercise . . . ,’<sup>151</sup> and ‘ . . . economic theory and empirical evidence . . . ,’ to press home the argument that the CP needs to be considered differently and spent ‘ . . . more efficiently. . . .’ If it can not, it should ‘ . . . be terminated as they amount to nothing more than pork barrel spending to favour one lobby after the next. . . .’ The reason for their continuation is various ‘ . . . political games . . . ,’<sup>152</sup> which amount to little more than pay offs to allow other policies to be carried through.<sup>153</sup> Whilst allowing for the improvement of infrastructure and not being wasted as such, the funds do not appear to achieve their goals ‘ . . . they do not alter the long run growth rate of the recipient regions in any significant way,’<sup>154</sup> whereas ‘ . . . national policies do make a huge difference; national policies that reduce distorting taxes and unproductive public spending, liberalize labor markets and foster job search and retraining, attract FDI (foreign direct investment) and minimize income support transfers seem to lead to sustained period of above average growth.’<sup>155</sup> SF payments seem to lead to ‘ . . . stagnating growth performance, little downward pressure on wages, rent-seeking activities by non-participants and unemployed and strong incentives to maintain the status quo, a picture which duplicates to a large extent the experience of the southern part of Italy and of a number of other provinces of southern Spain.’<sup>156</sup> It also reduces money available for other more productive activities as SFs have to be taken from productive economic actors via taxation.<sup>157</sup>

### 8.2.2 COHESION POLICY: VAGUENESS AND COMPLEXITY AND MS POWER

The objectives laid out in the SF are notoriously broad even the latest version, with aims such as ‘convergence’ which can cover a large range of projects leading to what can be described as ‘ . . . goal congestion.’<sup>158</sup> The inclusion of competitiveness in one of the objectives is another example; the following quotations illustrate the broad nature of the SF, ‘The very *omnipresence* of Structural Policy makes it difficult to pin down and evaluate . . . ,’<sup>159</sup> and ‘ . . . the cornucopia of the Structural Funds and the Cohesion Fund serving to supplement the meagre direct appropriations to the various sectors in the EU budget.’<sup>160</sup> This vagueness of the objectives of the CP is sympathetically criticised as the inevitable outcome from the complex ‘ . . . horse-trading . . . ,’ that has over time resulted in the web of commitments and payments to

<sup>149</sup> See note 79 Tarschys, (2003) p.91-92

<sup>150</sup> *ibid* p.94

<sup>151</sup> See note 105 Boldrin; Canova (2003) p. 2

<sup>152</sup> *ibid* p.3

<sup>153</sup> *ibid* p.38 ‘We are convinced that the recognition that structural and cohesion funds are just transfer payments across countries used to facilitate political bargaining and coalition building is not forthcoming hence...the “convergence goal” and of “growth and efficiency enhancing” objectives is likely to be maintained, scientific evidence to the contrary notwithstanding.’

<sup>154</sup> *ibid* p.29

<sup>155</sup> *ibid* p.31

<sup>156</sup> *ibid* p.33

<sup>157</sup> *ibid* p.30

<sup>158</sup> See note 79 Tarschys, (2003) p. 85 ‘Using several instruments to reach several objectives creates confusion and inefficiency, a point well made in the recent Sapir report (2003). The political masters of the European Union have squeezed so many tasks into Structural Policy that we have reason to be concerned about its own coherence and cohesion’.

<sup>159</sup> *ibid* p.82

<sup>160</sup> *ibid* p.84



MSs. This vagueness is what allows so many variant commitments to be covered and ‘ . . . fragile agreements . . . ,’ kept complete.<sup>161</sup> The Sapir report states that the:

‘ . . . link between Community fund disbursement and genuine regional development needs is weakened by a politically unavoidable tendency to balance transfers across Member States. This is reinforced by the fact that the unanimity rule in decision making, which regulated the planning of cohesion policy funds, gives every country a considerable amount of leverage. Secondly, Member States have a tendency to trade cohesion policy funds against other financial flows, such as those under the common agricultural policy and other internal spending programmes which have fewer strings attached.’<sup>162</sup>

The negotiations to set the financial perspectives are said to constantly follow the ‘ . . . line of least resistance, which consists of modifying, at the margin only, the financial allocations of the previous period. As a result, the current budget is more the expression of different deals and attempts by governments to claw back in receipts as much of their contribution as possible (*juste retour* again!) than a coherent set of measures aimed at pursuing EU objectives.’<sup>163</sup> The necessity of some if not total ‘renationalisation’ is stressed by the author who adds that the majority of regional policies are carried out by MSs in any case.<sup>164</sup>

MSs can thus be seen to be very much in control of essential elements of the CP and whilst some might prefer there to be less of it, or that the CP be directed towards different goals or want to retain their receipts from it, broadly most seem to wish to retain it. The report implies that the status quo proves that the EU and its assorted institutions and parts are not ‘ . . . serious and determined to achieve growth and solidarity;’ which require the budget to be ‘ . . . radically restructured.’<sup>165</sup> MSs are responding to their ‘ . . . national political constraints . . . ,’<sup>166</sup> and more concerned about claiming a national success than ‘ . . . about being sure that money is spent on worthwhile projects, let alone those fostering convergence in the EU as a whole.’<sup>167</sup>

### 8.2.3 COHESION POLICY SHOULD BE RE-FOCUSED

The ‘ . . . design and implementation . . . ,’<sup>168</sup> of the policy are considered not to be focused enough, in particular the regional targeting of it. Any future CP should ‘ . . . focus on countries. . . .’<sup>169</sup> It can be said to be in urgent need of reform and re organisation in order to fulfil the task it set out to achieve. The policy should aim to ‘ . . . help low-income countries to have good and stable administrative capacity; and . . . should be sustaining high investment rates in human and physical capital.’<sup>170</sup> In both the above the MSs should be allowed to allocate the

<sup>161</sup> See note 79 Tarschys, (2003) p.89-90 ‘In such a wide and complex political space as the European Union, it should not surprise us that some horse-trading takes place, that *combinazioni* are a natural part of the system of governance and that imprecise objectives are often employed as the glue required to keep fragile agreements together. When a whole army of evaluators is then dispatched into the quagmire of implementation to find out whether these objectives have actually been attained and return with rather vague tidings about impact and outcomes, they also deserve our sympathy and understanding’.

<sup>162</sup> See note 7 Sapir Report (2003) p.58

<sup>163</sup> *ibid* p.162

<sup>164</sup> See note 79 Tarschys, (2003) p.89-90 ‘The spectre of “renationalisation” is often conjured up as a horrendous step backwards in the integration process, but as we have seen above(3.3), this term is a bit of a misnomer. Most regional policies and other policies with a regional impact were always incumbent on the Member States, as was the bulk of aggregate territorial redistribution’.

<sup>165</sup> See note 7 Sapir Report (2003) p.162

<sup>166</sup> *ibid* p.146

<sup>167</sup> *ibid* p.146

<sup>168</sup> *ibid* p.146

<sup>169</sup> *ibid* p.146

<sup>170</sup> *ibid* p.146

funds as they see fit whilst the ‘ . . . operational principles . . . ,’<sup>171</sup> of the CP remain intact. The multi annual programming method combined with Member State co-financing and the securing of additionality ensured ‘ . . . political acceptability . . . ,’<sup>172</sup> by keeping contributors on board. It also prevented; ‘ . . . crowding out . . . ,’<sup>173</sup> domestic investment and ‘ . . . shielded investment expenditure from the economic cycle.’<sup>174</sup> Interestingly enough the budget would not need to be above 1% of Union GDP, as opposed to the 1.27% it is presently. It would appear to be the case that sorting out a cupboard makes more room even if it takes more effort than simply buying another one.

There is a need to adopt policies to meet the need of growth which ‘ . . . is also crucial to help the Union fulfil its political objectives.’<sup>175</sup> The Sapir Report calls for an end to the mismatch between the spending priorities of the EU and its current economic priorities, and thus a change in the inertia which is found in the ‘ . . . allocation of EU spending.’<sup>176</sup> In the area of CP they call for policy instruments to no longer combine objectives like growth and cohesion, it should be one or the other.<sup>177</sup> Some of the CP elements have even had a somewhat detrimental effect on the regions they were supposed to assist, ‘As our analysis makes clear, policies carried out at the EU level have in a number of cases interfered with the specialisation of regions in the aftermath of economic integration, and quite deliberately so since such policies were aimed at preventing agglomeration effects in the first place.’<sup>178</sup> The situation was one where ‘ . . . some specific instruments chosen to preserve cohesion in the course of the process of market liberalisation and integration may have exerted too high a toll in terms of growth.’<sup>179</sup> The DG and the Commission desire to stress the positive link between the CP and economic growth is the current bugbear of the EU, but at times convergence can be seen as a negative to growth.<sup>180</sup> The funds should not be used to fund ‘ . . . grand objectives of growth, employment and regional convergence . . . ,’ as the link between these and the funds is too ‘ . . . tenuous . . . ,’ to justify the use of European Common funds.<sup>181</sup>

The report stresses the importance of administration in the development of MSs, ‘ . . . the quality of local administration can be a binding constraint on the effectiveness of EU Cohesion Policy and on the convergence process as a whole.’<sup>182</sup> In particular the ability of a MS to absorb SFs is dependent on its administration. Administrative capacity and the need to develop it in the NMSs was stressed by the Copenhagen criteria.<sup>183</sup> Part at least of the Irish success story is that it ‘ . . . has been able to maintain good standards of administrative capacity and in

<sup>171</sup> See note 7 Sapir Report (2003) p.147

<sup>172</sup> *ibid* p.146

<sup>173</sup> *ibid* p.146

<sup>174</sup> *ibid* p.146

<sup>175</sup> *ibid* p.124

<sup>176</sup> *ibid* p.126

<sup>177</sup> *ibid* p.125

<sup>178</sup> *ibid* p.72

<sup>179</sup> *ibid* p.72

<sup>180</sup> See note 79 Tarschys, (2003) p.92-95 ‘The fuzzy relationship between convergence and general economic growth is another matter of concern. Growth is a key priority for the European Union, anchored in a range of recent texts, such as the 1997 Stability and Growth Pact and the Presidency Conclusions of the 2000 Lisbon and 2001 Göteborg Councils. The pursuit of convergence is partially compatible with this goal in so far as it seeks to stimulate growth in lagging regions, adapt manpower to new demand and support the modernisation of various distressed areas. But from the limited point of view of convergence it would not be bad news if growth were to slacken in the wealthier parts of the Union. How the two ambitions interact is at best uncertain. On the basis of these considerations, it seems doubtful whether convergence is such a well-chosen priority for European policy’.

<sup>181</sup> *ibid* p. 95 ‘ . . . but if there is no European value added and no outreach to other countries, then there should be no European funding. Pouring Structural Policy resources into small and medium-size enterprises simply to “create jobs” or “maintain jobs” should come to an end. None of these tasks have been adequately defined, and the contribution of this effort to the grand objectives of growth, employment and regional convergence is too tenuous to merit common European financing.

<sup>182</sup> See note 7 Sapir Report (2003) p. 62

<sup>183</sup> *ibid* p.62



general a favourable investment climate.<sup>184</sup> The final recommendations of the report were for the CP to concentrate on institution building and R and D, education and training.<sup>185</sup> This was largely shared by the article referred to previously which elaborated on the human resource side:

‘Moving from the present formula of “cohesion through economic convergence” to a new formula of “cohesion by the most cost-effective means available” would give added prominence to investments in the non-material sphere . . . There would be more support for exchange and mobility programmes facilitating trans-national meetings between groups and individuals and for efforts to enhance the awareness of our common heritage and common policy problems. Since education, culture and mass communications would be crucial arenas in this pursuit, it is important to underline the need for pluralism and diversity.’<sup>186</sup>

Transport and environmental projects with a European dimension could still be financed<sup>187</sup> according to the same author.

#### 8.2.4 COURT OF AUDITOR CRITICISMS

The problematic state of the Commission for the period of 2000-2006 was analysed by the Court of Auditors in their Special Report which highlights several areas needing attention. The statistics which the Commission used were not up-to-date and resulted in 10 regions receiving funding which would not have been the case if recent statistics had been used.<sup>188</sup> Several ‘ . . . unrealistic deadlines . . . ,’<sup>189</sup> set out by the Commission in the related regulation failed to be reached owing to the Commission’s internal reforms and restructuring in 2000. Further reasons were ‘ . . . changes in consultation procedures . . . ,’ combined with a fuzzy division of responsibilities between it and the MSs and the ‘ . . . cumbersome nature of the adoption process.’<sup>190</sup> The Commission and MSs also have ‘ . . . different approaches to the drafting and finalisation of programming documents . . . ,’ with the former turning the programming into a sequential series of steps each of which must be completed before the next can be considered whilst the MSs aim to be holistic, a lack of consistency resulted which led to delays.<sup>191</sup> The expected simplification of the programming failed to materialise with bureaucratic hurdles leading to delays<sup>192</sup> and a ‘ . . . hiatus in the aid-granting process, especially where grants to enterprises were concerned.’<sup>193</sup> The MSs use Commission working documents to successfully complete their programming work, however these are said to be still not good enough for the task and fail to assist political decision makers comparing the various ‘public intervention’ principles some of which may well have been more productive.<sup>194</sup> The evaluation methods used by MSs at the ex-ante stage ‘ . . . focused on justifying the chosen strategy. There was no critical appraisal or analysis of alternative strategies.’ Whatever the theory, as stated by the Commission, the practice did not match it and although ‘ . . . the quality of

<sup>184</sup> See note 7 Sapir Report (2003) p.62

<sup>185</sup> *ibid* p.147

<sup>186</sup> See note 79 Tarschys, (2003) p.96

<sup>187</sup> *ibid* p.94

<sup>188</sup> Court of Auditors, Special Report No 7/2003 on the implementation of assistance programming for the period 2000 to 2006 within the framework of the Structural Funds together with the Commission’s reply 2003/C 174/01 p.8 § 9

<sup>189</sup> *ibid* p.10; § 19

<sup>190</sup> *ibid* p.10; § 20

<sup>191</sup> *ibid* p.10; § 21

<sup>192</sup> *ibid* p.10; § 23

<sup>193</sup> *ibid* p.10; § 24

<sup>194</sup> *ibid* p.11; § 26 ‘...still not sufficiently detailed’; ‘...made no attempt to investigate alternative strategies and activities’; ‘...do not specifically require detailed information on all the national and regional policies concerned; ‘the basic principles which justify public intervention, and to which political decision-makers may refer, are inadequately highlighted. The working documents and guidelines also fail to highlight other principles, such as those which aim to avoid deadweight or displacement effects or to guarantee the added value or incentive effect of aid or the sustainability of results and impacts.’

evaluations was rather uneven and at times unsatisfactory . . . the Commission . . . intervened in only a few cases,' problems were present in the area of indicators and objectives and their quantification, which led to problems of verification and the best distribution of resources.<sup>195</sup> The Commission ' . . . recommended the use of state of the art macroeconomic models'<sup>196</sup> which it did not use itself and the models ' . . . were used to limited effect,' by the MSs. The models themselves seem to have limitations, in particular their national approach.<sup>197</sup> The Commission is stated as not being in a position ' . . . to obtain a valid comparative analysis of results between member states . . . ,' as ' . . . the Commission has not yet mastered this combining of approaches and models.'<sup>198</sup> The, on the whole, top down approach to setting indicators led to a ' . . . lack of coherence between indicators of different levels . . . ,' and so ' . . . the indicators expression of objectives, results and achievements was often incomplete or sometimes irrelevant . . . ,' but improvement is stated to have occurred.<sup>199</sup> Other means of monitoring and evaluating the financing plans were said to have lost their effectiveness and to ' . . . simply reproduce the annual breakdown set out in the financial perspective, without including realistic forecasts of how the structural action will progress.'<sup>200</sup> The performance reserve which was created to reward MSs which achieved certain objectives, was a good idea, but is said to have been 'severely compromised,' as ' . . . in practice, the performance reserve entails a complex procedure for reallocating funds, where the almost free choice of criteria or indicators and the freedom to exploit them . . . may lead to inconsistencies and ineffectiveness in the use of the reserve . . . many of the choices made by the Member States depart substantially from the indicative list provided by the Commission.' Far from the fund being a reward it is often stated that ' . . . in no event will it remain unused.'<sup>201</sup>

Guidelines ' . . . for the closure of measures are not sufficient to compensate for the lack of binding provisions in the regulations, or to harmonise practices between the various funds. The current provisions do not provide a guarantee of the legality and regularity of the transactions underlying the Community contributions for all completed periods . . . The checks carried out by the Commission are still inadequate. The organisational measures taken in 2000 have yet to produce any tangible results.'<sup>202</sup> There were ' . . . delays in introducing the control structure and organising controls that are to cover the whole of 2000 to 2006 . . . ,' and ' . . . weaknesses (no on the spot check, insufficient audit trail) were also found at the level of the internal controls for which the managing authority is responsible.'<sup>203</sup> Implementation was in 2000 slower than expected, even though rules had been brought into force to speed things up and there was ' . . . considerable under-utilisation of commitment and payment appropriations . . . ,' and the Commission did not explain why some programmes had not been adopted.<sup>204</sup> The Commission data base ' . . . still has some gaps and is difficult to use for verifying and analysing expenditure statements, annual reports and payment forecasts,' resulting in the Commission only using it for one task which ' . . . makes the Commission's role more

<sup>195</sup> See note 188 Court of Auditors, Special Report No 7/2003 p.13 § 35-36 'shortcomings in the quantification of relevant indicators and objectives... Generally speaking, the programming did not ensure that the methods used to quantify indicators and costs were verifiable. In a similar vein, the Commission and Member States seldom verified that the principles justifying public sector intervention had been applied. The other principles described in paragraph 26e were barely touched upon in the programming of CSFs and assistance... These are significant omissions, because they weaken the cohesion of CSFs and SF intervention. They are a barrier to the optimum choice of the resources to be used to satisfy the specific needs of the regions as regards sustainable development, convergence, employment, competitiveness, productivity and the integration of target groups.'

<sup>196</sup> *ibid* p.13; § 37

<sup>197</sup> *ibid* p.13; § 39

<sup>198</sup> *ibid* p.14; § 41

<sup>199</sup> *ibid* p.14; § 43

<sup>200</sup> *ibid* p.14; § 45

<sup>201</sup> *ibid* p.18; § 51-52

<sup>202</sup> Court of Auditor's Report on Activities Financed from the General Budget year 2000; information note p.18

<sup>203</sup> See note 188 Court of Auditors, Special Report No 7/2003 p.18; § 57

<sup>204</sup> See note 202 Court of Auditor's Report on Activities Financed from the General Budget year 2000 p.16



difficult, since it has to use data interchange both for dynamic and strategic monitoring of programme priorities and for formulating observations or recommendations. . . .<sup>205</sup> The MSs logically enough had problems using the database<sup>206</sup> and much of the data from the last programming period had yet to be entered meaning that ‘ . . . in some cases there is even a risk of duplicate payments to beneficiaries.’<sup>207</sup> Insufficiently detailed instructions from the Commission led to annual implementation reports being submitted late.<sup>208</sup> The eligibility rules lacked precision and some basic concepts like ‘ . . . legal commitment and financial commitment. . . . are less clearly defined than before,’ and other changes to the text created problems with regard to alternative financing.<sup>209</sup> Some concepts were included in the new rules but ‘ . . . their meaning has sometimes been changed . . . ,’ which ‘ . . . allows final beneficiaries a very wide margin for manoeuvre as regards limitations or differences of interpretation. . . .’<sup>210</sup>

All in all there appears to have been a lack in thoroughness right through the SF<sup>211</sup> and the Commission was a partner in them and had a crucial role which it seemed not always to have lived up to. With regard to the issue of eligibility of private expenditure ‘ . . . the type of decision being equal, the Commission’s management is not always consistent.’<sup>212</sup> New mechanisms led to delays and turned out to be bureaucratic additions<sup>213</sup> and ‘ . . . the objective of simplification has still not been fully attained, and sometimes, the reverse has been achieved.’<sup>214</sup> Furthermore management systems ‘ . . . are still incomplete and inadequately defined.’<sup>215</sup> Far from there being one European-wide policy there seemed, at times, to be wide MS variance in many aspects of the funds<sup>216</sup> and too often the goal seemed to be to simply spend the funds rather than concentrating on effectiveness.<sup>217</sup> The undertaking by the Commission to ‘ . . . improve consistency between regional policy and competition policy’ so that the areas allowed to receive state aid matched with those in a position to receive SFs, did not occur.<sup>218</sup>

#### 8.2.5 THE COMMISSION RESPONSE; REFORM CALLS RESISTED; THE THIRD REPORT ON ECONOMIC AND SOCIAL COHESION AND THE NEW COUNCIL REGULATION PROPOSED

The Commission response to the criticism laid at its door by the Sapir report, the main contributory MSs and others was seemingly to generate the Third Report on Economic and Social Cohesion. It was stated by the Economist that ‘the Sapir Report suggested a rethink . . . Sadly the Commission, under pressure from national governments, ignored it.’<sup>219</sup> Instead the Commission identified ‘ . . . our challenges for the future . . . :’ a need for more cohesion owing to the enlargement and a reinforcement of the Union’s priorities. It stressed a need to ‘ . . . promote more balanced and sustainable development and finally to establish a “new partnership for cohesion.”’<sup>220</sup> Overall the document acknowledges the need for improved targeting ‘ . . .

<sup>205</sup> See note 202 Court of Auditor’s Report on Activities Financed from the General Budget year 2000 p.19; § 61

<sup>206</sup> *ibid* p.19; § 59

<sup>207</sup> *ibid* p.19; § 62

<sup>208</sup> *ibid* p.19; § 63

<sup>209</sup> *ibid* p.19; § 70-71

<sup>210</sup> *ibid* p.20; § 73

<sup>211</sup> *ibid* p.21; § 79-78 and p.23; § 95 and § 92

<sup>212</sup> *ibid* p.21; § 81

<sup>213</sup> *ibid* p.23; § 88

<sup>214</sup> See note 188 Court of Auditors, Special Report No 7/2003 p. 23; § 97

<sup>215</sup> *ibid* p.23; § 94

<sup>216</sup> *ibid* p.22; § 84 and 85 and p.21; § 76

<sup>217</sup> *ibid* p.23; § 102

<sup>218</sup> *ibid* p.9; § 15-16

<sup>219</sup> The Economist March 3 2005, *The battle of the budget*

<sup>220</sup> See note 115 The Third Report on Economic and Social Cohesion (2004) p.xxv

more concentration . . . <sup>221</sup>of its resources on a more limited number of priorities in particular towards meeting the current Community priorities set at Lisbon and Gothenburg and only when 'Community intervention can be expected to bring about a leverage effect and significant added value.'<sup>222</sup>The previous objectives 1, 2 and 3 are replaced by the titles: convergence; regional competitiveness and employment and territorial co-operation.<sup>223</sup> There are recommendations for: a ' . . . reformed delivery system . . . , ' which would involve the use of new strategic documents and annual assessments of progress<sup>224</sup> made on progress towards the meeting of the goals set in these; more decentralization and programming simplification; more emphasis placed on quality and performance.<sup>225</sup> The way that state aids are dealt with at present in the EU would also be altered. The report also addresses the need to revise the way that contributions are paid to the EU, with a change in its 'own resources' appropriation method, to allow for its income to proceed from ' . . . energy consumption, VAT resources or corporate income . . . , '<sup>226</sup>this would possibly reduce the situation of overt payments being made by national treasuries to the EU with all the political fallout that results.

All in all, the document represents a dynamic and vigorous response to the criticisms made in the previous year. Far from the DG backing down or reducing the SFs as recommended, although there is to be greater targeting and some of the observations made by the critics appear to have been addressed, the report states:

' . . . that the Union's intervention in a number of key policy fields required strengthening. In particular, the Commission decided that an ambitious cohesion policy should be an essential element of the total package. Importantly, in the new budgetary structure, the Commission maintains the view that cohesion policy should be allocated a single, and transparent, budgetary heading which is essential in order to provide the certainty and stability necessary for the planning of the next generation of national and regional multi annual programmes . . . that cohesion policy, (is) one of the pillars of the European construction together with the single market and the monetary union. . . . '<sup>227</sup>And 'this also means that the concept of cohesion that has applied at the European level has not been a passive one that redistributes income but a dynamic policy that seeks to create resources by targeting the factors of economic competitiveness and employment. . . . '<sup>228</sup>

The text continues with stressing how CP has served the Union well and will do more so in the future.<sup>229</sup> Financially the report proposes that the CP annual expenditure increase from 38.8 Billion Euros in 2006 to 51 Billion in 2013,<sup>230</sup>this represents a ' . . . substantial increase.'<sup>231</sup> Whilst the foreword states that the report is the result of three years work as opposed to purely a response to the Sapir Report, a later paragraph states, ' . . . in the course of these consultations, I have been asked many searching questions on the impact, the "added value," of the interventions of the European Union in this field. For example, has cohesion policy succeeded in reducing the economic, social and territorial inequalities in standards of living and levels of opportunity? The report provides a detailed response to such important

<sup>221</sup> See note 115 The Third Report on Economic and Social Cohesion (2004) i p.xxxvi

<sup>222</sup> *ibid* p.xxvii

<sup>223</sup> *ibid* p.xxvii

<sup>224</sup> *ibid* p.xxxiv

<sup>225</sup> *ibid* p.xxxvii

<sup>226</sup> See note 92 Bachtler,; Wishlade (2004) p.10

<sup>227</sup> See note 115 The Third Report on Economic and Social Cohesion (2004) p.xxv

<sup>228</sup> *ibid* p.xxv

<sup>229</sup> *ibid*

<sup>230</sup> See note 92 Bachtler,; Wishlade (2004) p.1

<sup>231</sup> *ibid* p.11



questions.<sup>232</sup> Discussions with officials confirmed the view that the report did also represent a defense of the policy from the Sapir report and other critics.<sup>233</sup>

The rather unfortunate backdrop to the Commission's report, was the combination of the enlargement and more MSs which would obviously be eligible for considerable support under the CP. And this at a time of economic malaise in the EU and a lackluster progress towards achieving the Lisbon agenda. This last concern was reflected in the report's content and emphasis on the Lisbon goals.<sup>234</sup> More detailed analysis of the report and the policy changes that it outlines and recommends show that<sup>235</sup> the CP would be less project and area specific and time bound in its application, and would rather become a ' . . . permanent, horizontal policy pursuing the goal of balanced territorial development . . . , ' and thus assisting the goal of 'economic convergence.'<sup>236</sup> Under the convergence objective MSs and their regions which lost out as a result of the statistical change in calculating the GNP of the Union as a result of the enlargement would be compensated. This statistical change arose from the SF requirement, that only regions which have less than 75% of the EU average GDP per head receive assistance via the SF, being affected by the enlargement. The average fell as a result of the NMSs, meaning that some regions whose situation had remained unchanged in reality, found themselves suddenly above the 75% cut off line. Thus old MSs under the compensatory regime to ameliorate the above would still be receiving considerable levels of funds.<sup>237</sup> Under the competitiveness and employment objective MSs would control the disbursement of funds within their territory which is maybe a move in the direction recommended by the Sapir report.<sup>238</sup> The naming of the third objective 'European territorial cooperation,' was probably also an attempt to prove the European added value of the policy and to make it even more obvious. It is in practice ' . . . an expanded version,' and renamed version of a previous policy the INTERREG initiative.<sup>239</sup> On the CF front, Spain and Ireland would both cease to receive funding, but some authors found it ' . . . difficult to envisage that no transitional arrangements will be made for Spain.'<sup>240</sup>

The use of the 4% cap on payments to the NMSs would now be extended to all. The 4% cap worked on the basis that countries, in particular the applicant ones, were considered to be unable to effectively absorb more than 4% of their GDP in the form of SFs. Thus any funds which would have been allocated, owing to other methods of calculation, over and above this would be removed. Whatever its justification and the truth in it, it was only the NMSs which would be affected and they would otherwise have received more funding had it not been put in place. Extending it to all MSs might look like solidarity and that the same rules apply to all but this seems a bit empty if not cynical.<sup>241</sup> According to one article the so called Berlin formula, would appear to have been the means of calculation that the Commission would use, but this was problematic as then the Commission's sums did not add up and despite the intention of applying one rule for all, in practice the NMSs would have their income decided by the 4% cap whilst the old MSs by the Berlin formula.<sup>242</sup> Since the 4% rule applied to all payments

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<sup>232</sup> See note 115 The Third Report on Economic and Social Cohesion (2004) foreword p.iii

<sup>233</sup> Interviews with Commission Officials: DG REGIO

<sup>234</sup> See note 92 Bachtler,; Wishlade (2004) p.7-8

<sup>235</sup> *ibid* p.13

<sup>236</sup> *ibid*.

<sup>237</sup> *ibid* p.14

<sup>238</sup> *ibid* p.15

<sup>239</sup> *ibid* p.15

<sup>240</sup> *ibid* p.30

<sup>241</sup> *ibid* p.23

<sup>242</sup> *ibid* p.28-29

including those from the CF and other instruments the amount the NMSs would be losing was even greater.<sup>243</sup>

MSs have their own positions on the CP debate and these range from supportive to those wanting the budget to be limited and the policy likewise, other MSs find themselves in between. In particular Spain, Greece and Portugal called for an increase in spending and linked this call to concerns about competitiveness and the Monetary Union; the NMSs supported them in this.<sup>244</sup> The richer countries called for a reduction from the current amount, unlike the Commission they would like to see a ceiling set at 1% GNP and then decide on priorities, unlike the Commission which preferred to see expenditure levels set and then the required budget agreed.<sup>245</sup> An interesting range of arguments against any increase were given: Germany stated the budgetary pressure that contributor states were under;<sup>246</sup> the UK was unconvinced that elements of the policy represented any added value and even thought they had a negative effect on economic performance;<sup>247</sup> the Dutch saw that efficiency and effectiveness issues were not met by the policy and that it could be better dealt with at a lower level;<sup>248</sup> and there was concern expressed that NMSs would in fact be negatively affected by any increase in the budget as they would also face increased contributions and would end up financing CP support to richer old MSs.<sup>249</sup> MSs in between the two extremes did not consider a reduction to be feasible but agreed that discipline was necessary and that it should be spread over all policies.<sup>250</sup> MSs mostly regarded the move of the creating 'thematic priorities' to fit in with the Lisbon and Gothenburg goals to be a positive approach. Although some MSs thought that the concentration of the funds could be improved as the term 'competitiveness' could cover everything. Germany, the Netherlands and Italy took this view.<sup>251</sup> Spain in particular wanted the statistical growth element taken into consideration.<sup>252</sup>

With regard to the new '... delivery system ...' and the stated goal of simplification of implementation of the funds MSs expressed skepticism as they were promised this before in 1999 and it was not forthcoming. This skepticism in the simplification of the funds was expressed by the EP as well, 'The Committee welcomes the strengthened strategic approach to cohesion policy in the draft Regulation and acknowledges the stated desire of the European Commission to simplify the procedures concerning the Funds. However, our Committee is concerned that these new procedures may increase bureaucracy ...'<sup>253</sup> Given some of the proposals contained in the report, this skepticism would appear justified as will be discussed later, at this point it enough to say that it seemed hard for the Commission to add more evaluative and monitoring devices and stages to the funds and at the same time expect them to be simpler. Federally inclined MSs expressed concern about the new planning framework which might weaken subsidiarity in favour of the central government.<sup>254</sup> Ireland and other states were uneasy about the '... practicalities of the proposal ...' and the '... potentially disproportionate administrative cost ...' where the drawing up of the new national strategy papers was concerned. Furthermore they were worried about the; '... degree of detail ...' that these must contain and also the role of the Council in drawing up the EU level strategies.<sup>255</sup>

<sup>243</sup> See note 92 Bachtler,; Wishlade (2004) p.29

<sup>244</sup> *ibid* p.42

<sup>245</sup> *ibid* p.42

<sup>246</sup> *ibid* p.42

<sup>247</sup> *ibid* p.43

<sup>248</sup> *ibid* p.43

<sup>249</sup> *ibid* p.43

<sup>250</sup> *ibid* p.44

<sup>251</sup> *ibid* p.47

<sup>252</sup> *ibid* p.47-48

<sup>253</sup> See note 107 Final A6-0177/2005 Interim report on the proposal for a Council Regulation p.24

<sup>254</sup> See note 92 Bachtler,; Wishlade (2004) p.48

<sup>255</sup> *ibid* p.49



Final points which require addressing are that the report failed to accept the fact that CP can do little to achieve the Lisbon goals. MSs like Germany thought that the Lisbon goals will be mostly achieved through ‘ . . . structural reforms such as market liberalization and not via instruments such as cohesion policy.’<sup>256</sup> This maybe fits in well with the Sapir report and other critics which suggest that given the limited resources available to the CP it should avoid involvement in the Lisbon agenda. The legitimization that this might give to the policy in the short term may well prove to be a liability in the longer term. The Commission proposals reveal possible ‘ . . . conflict between the goals of competitiveness and cohesion . . . ,’ with the shift in focus going from regions needing help to ‘ . . . measures which encompass all regions and . . . shift the thematic focus away from investment and employment to issues such as innovative capacity.’<sup>257</sup> Also the infra structure needs of recipient MSs could be detrimental to their ability to meet or participate in competitiveness schemes. To some extent the complexity of SF administration has already proven to be prohibitive in practice, to states dealing with competitiveness issues.<sup>258</sup> The policy shift of the Commission could lead to the situation of all regions being eligible to receive funds and this has resulted in Germany and the main recipient countries being skeptical and wanting the funds to be properly targeted. Maybe the report represents the Commission trying to offer something to everyone although this hardly fits in with the goals of concentration.<sup>259</sup> Finally the policy objective of territorial cohesion still remained unclear.<sup>260</sup>

Interestingly enough, although not particularly surprising, the Commission in its report appeared to take the starting point of economic problems, lower growth and higher unemployment, as a justification for a new CP rather than cutting down or removing the old. The last paragraph under the title ‘Why do we need a new Cohesion Policy?’ stated, after making the connection between the enlargement challenge to competitiveness and internal cohesion and that there will be a larger gap between the poor and the rich in the new Europe combined with economic restructuring due globalisation, ‘Finally, economic growth in the EU has slowed appreciably since 2001. As a result, unemployment has risen again in many parts of the Union with all the social implications which this entails. As a springboard to the future, the Union should fully exploit the opportunities provided by the current trend towards recovery.’<sup>261</sup>

### 8.3 COUNCIL REGULATION (EC) No 1260/1999 AND ITS PROPOSED REPLACEMENT COM (2004) 492 final.

In total the DG appeared to be striving to restore its position and that of the CP. If the regulation of 1999 laying down general provisions on the SF is compared to the proposal of 2004 then there are some clear differences in terms of content and also in tone. All in all, the proposal is considerably more robust than the regulation and gives the Commission a more active and decisive role in the policy than it previously held, whilst also continuing the decentralisation process but at the same time weakening the role of sub national partners. The bare fact that the proposal contains 109 articles as opposed to the regulation which has 56 bears witness

<sup>256</sup> See note 92 Bachtler,; Wishlade (2004) p.46

<sup>257</sup> *ibid* p.51

<sup>258</sup> *ibid* p.51

<sup>259</sup> *ibid* p.13 and p.46

<sup>260</sup> *ibid* p.52

<sup>261</sup> Memo/04/182 ‘Questions and answers on the reform of Cohesion Policy and the Structural Funds 2007-2013’, 15.07.2004 p.1

to the apparent new drive by the Commission, to reclaim in detail what it maybe lost in the previous simpler regulation.

The text of the proposal states under Article 10 titled 'Partnership' that ' . . . assistance from the Funds shall be decided by the Commission within the framework of close cooperation, hereinafter "partnership", between the Commission and a Member State. The Member State organises, in accordance with current national rules and practices, a partnership with the authorities and bodies which it designates.' The text of the regulation Article 8 titled 'Complementarity and Partnership' states 'Community actions shall complement or contribute to corresponding national operations. They shall be drawn up in close consultation, hereinafter referred to as the "partnership," between the Commission and the Member State, together with the authorities and bodies designated by the Member State within the framework of its national rules and current practices.' Whilst the regulation in Article 28 states, 'Provided that all the requirements of this regulation are fulfilled, the Commission shall adopt in a single decision the contributions of all the Funds.' The proposal states under Article 10 ' . . . assistance from the Funds shall be decided by the Commission within the framework of close cooperation, hereinafter "partnership," between the Commission and a Member State. The wording reflects a more dynamic approach by the Commission.

In particular it is the area of evaluation and monitoring which shows the Commission reclaiming ground from the MSs. Previously its role was extremely limited at the outset of a project with the MSs and or the regions concerned responsible for the ex ante programming as set out in Article 41 of the regulation, ' . . . ex-ante evaluation shall be the responsibility of the authorities responsible for preparing the plans, assistance and programme complement . . . , ' and Article 15 states, ' . . . in respect of objectives 1, 2 and 3 member states shall submit a plan to the Commission. That plan shall be drawn up by the competent authorities designated by the member state at national, regional and other level.' The Commission can then ' . . . appraise these plans to determine whether they are consistent with the aims of this regulation. . . . ' The Commission is involved and can appraise the plans but is not responsible for them. In the regulation it states that the plans have to be consistent with the aims of the regulation Article 9 but these aims are more of a list of definitions than a basis for measurement.

The proposal states under Article 47 titled, 'Responsibility of the Commission,' that ' . . . the Commission shall carry out evaluations to prepare and monitor the community strategic guidelines.' These guidelines are to some extent a new element in the CP, as they are drafted by the Commission, approved by the Council and are the measuring basis by which national plans will be assessed and evaluated by the Commission annually. In the explanatory memorandum of the proposal section 5.1 and 5.2 the strategic guidelines are explained as being developed as follows:

'The Commission proposes that an overall strategic document for cohesion policy should be adopted by the Council, with an opinion of the parliament, in advance of the new programming period and on the basis of a Commission proposal, defining clear priorities for member states and regions. This strategic approach would guide the policy in its implementation and make it more politically accountable . . . Each year the European institutions would examine progress on the strategic priorities and results achieved on the basis of a report by the Commission summarising member states' progress reports . . . At the political level: on the basis of the strategic guidelines adopted by the Council, each member state would prepare a national framework document on its development strategy, which would be negotiated with the Commission and constitute the framework for preparing the thematic and regional programmes. . . . '



This procedure is in principle new and the Commission would be deciding most of the guidelines which would then be the basis for all the other documentation and assessments, and subsequently it would be drafting the reports and thus evaluating performance in a more direct manner than occurred before. There is a curious use of words when the Commission talks about MSs 'progress reports' this is reminiscent of the progress reports which the Commission made on the NMSs, or CEECs as they were called then, as it assessed their progress on meeting the criteria for accession. Many of the recipients of the CP will be the NMSs. Also where evaluation procedures are concerned, usually the MSs were allowed to carry out evaluations as they saw fit so long as the criteria were met, now where the evaluations connected to the guidelines are concerned there is a requirement that 'Evaluations shall be carried out by independent assessors,' Article 45: 3. This could well be to impress contributors and could be seen to be there with the weak administrations of the NMSs in mind.

In general the proposal is stricter than the regulation. Article 71 of the proposal states, ' . . . without prejudice to audits carried out by member states, Commission officials or authorised Commission representatives may carry out on-the-spot audits to verify the effective operation of the management and control systems, which may include audits on operations included in the operational programme, with a minimum of one working day's notice.' The regulation in contrast states in Article 38 §2 ' . . . without prejudice to checks carried out by the member states in accordance with national laws, regulations and administrative provisions, Commission officials or servants may, in accordance with arrangements agreed with the member state in the framework of cooperation described in paragraph 3, carry out on-the-spot checks . . . with a minimum of one working days' notice.' In the proposal the Commission is less concerned with ' . . . arrangements agreed with the member state . . .,' and the ' . . . framework of cooperation,' ' . . . in accordance with national laws, regulations and administrative provisions.' Whilst in practice these will no doubt be taken into consideration, the fact that the Commission chooses not to mention them in the proposal reflects on its new determination. In the proposal the Commission is tougher in its dealing with payments, now there are fixed time limits, article 91 states that there are 2 months placed for the MSs to make observations with regard to the suspension of payments, in the regulation there were none.

Finally the proposal stresses in Article 68 that ' . . . the member states shall provide information on and publicise co-financed programmes and operations. The information shall be addressed to European citizens and to the beneficiaries. It shall aim to highlight the role of the Community and ensure that assistance from the funds is transparent.' This is more authoritative than Article 46 of the regulation which states, ' . . . Member states shall ensure that publicity is given to development plans . . . the managing authorities shall be responsible for ensuring that publicity is given to the package and particularly informing: a. potential final beneficiaries, trade and professional bodies, the economic and social partners, bodies promoting equality between men and women and the relevant non-governmental organisations about the opportunities afforded by the assistance; b. the general public about the role played by the Community in the assistance concerned and its results.' The contents of paragraph a. are not explicitly included in the proposal and the proposal can be seen to be giving the MSs, as opposed to the managing authority, clear instructions, orders almost, unlike in the regulation. The renaming of INTEREG to 'European Territorial Cooperation,' in the proposal, Article 37, is another direct move by the Commission to stress the role of the Community and the European level 'added value' that it provides, and to so answer the critics.

The report by the EP on the proposal for the new regulation is useful to consider as it reveals both the parliament's position with regard to the CP and also because the report reveals MS

attitudes towards the proposal. The latter point is addressed several times by the parliament when it calls for the essence of various elements of the proposal not to be diluted; this implies that it is aware of the MSs' desire to do just that. This is explicitly considered in the explanatory statement of the report where the EP states:

'These relate both directly to the Commission's proposal and to the information received by the rapporteur as to the 'state of play' within the Council of Ministers. With regard to the Commission proposal, there is clearly a high degree of conformity between it and the positions already adopted by the European Parliament. Nevertheless, a number of calls for change or addition have been made. In the case of the Council, Parliament may recommend a similar course of action, where the debate appears to be moving in the right direction. However, where that is not the case Parliament may, in the first instance, seek to deter unwelcome developments by indicating its rejection of them, but might ultimately have to refuse its assent were the Council's position to be considered politically unacceptable.'<sup>262</sup>

In general the EP states its support for the proposal and makes it clear that any re-nationalisation of the policy is unacceptable. It is also against the idea of MSs being issued with '... blank cheques ...',<sup>263</sup> which would appear to mean something like the Sapir report suggestion of allowing MSs to direct the funds as they considered best which some MSs evidently still supported. It was also in favour of support being maintained in the old MSs poorest regions as well as those of the NMSs, and stated that there had been suggestions from some quarters that 'the financial envelope' should either be increased or decreased. No doubt this was a reflection on wide differences in the Council between the recipient MSs and the contributors.<sup>264</sup> It even called for '... special compensation mechanisms to be established for those regions or Member States that face substantial financial losses, due to the disparities caused by the implementation of the Commission proposal regarding the allocation of financial resources. ...'<sup>265</sup> This would seem to fit with the expectation mentioned earlier that some sort of special arrangement would have to be made for Spain and maybe other old MS recipients. It recommended more flexibility<sup>266</sup> and support for SMEs, which sometimes appeared to be somewhat less relevant to the Commission than the EP.<sup>267</sup> Also environmental issues like '... the European sustainable development strategy ...' were emphasised as needing to be stressed more in the proposal.<sup>268</sup> The report was critical of the weakening of the partnership principle the EP, 'Rejects any weakening of the principle of partnership as envisaged in the original proposal, especially in terms of strategic planning and monitoring of the programmes; calls particularly for the maintenance of the list of appropriate bodies.'<sup>269</sup> Interestingly it mentioned the method for rewarding performance related to absorption of funds, the 4% capping principle, and expressed concern that this should be made as fair and objective as possible to so allay suspicions, 'The current system, which simply rewards the best programmes within a Member State, cannot really provide a true motive to make substantial progress concerning absorption rates, growth or performance. Therefore, the criteria that apply to the allocation of these resources should be both fair and objective, so as to eliminate any suspicion that the money will only go to the richer EU states.'<sup>270</sup> Possibly suspicions have been expressed by the NMSs in relation to this.

<sup>262</sup> See note 107 Final A6-0177/2005 Interim report on the proposal for a Council Regulation p.9

<sup>263</sup> *ibid* p.10-11

<sup>264</sup> *ibid* p.5 point 15

<sup>265</sup> *ibid* p.10

<sup>266</sup> *ibid* p.10

<sup>267</sup> *ibid* p.6 point 29

<sup>268</sup> *ibid* p.5 point 20 and point 30

<sup>269</sup> *ibid* p.4 point 9

<sup>270</sup> *ibid* p.11



## 8.4 DG REGIO ORGANISATIONAL STRUCTURE

The DG for Regional Policy was set up in 1967 after the merger of the executives of the Communities. The elements of the Commission of the EEC and the High Authority of the ECSC which dealt with regional measures were combined and this is stated to have '... provided a new impetus to the development of Community regional policy.'<sup>271</sup> The new DG, restructurings and merging and EU organisations in general do thus have an impact directly on the policy they are involved with, right from the start.

The DG has seen an increase in its size in recent times from seven to nine directorates and 550 staff. There used to be four directorates dealing with geographical issues i.e. dealing with the day to day running of the CP in the various countries, and three so called horizontal directorates which dealt with the development of policy, inter DG coordination, anything basically which did not directly involve the implementation of the policy. Now the balance has changed to four directorates still for geographical desks but an extra two for horizontal matters; these last two are for human resources and auditing. There has also been an increase in the number of deputy Directors with the creation of one for the geographical aspects of the DG and one for the horizontal ones.

Staffing levels in the DG have been steadily increasing, in 2002-2003 it gained an extra 50 staff; in 2003 an extra 70 temporary agents, many who then failed the exam to become permanent officials and 50 more in 2004. The Secretariat General decided to stagger the new staff allocations for the enlargement so that DG will get their full allocation of 271 by 2008.<sup>272</sup> On the one hand DG management members said staff were generally insufficient,<sup>273</sup> on the other the DG was said to be '... understaffed for what it wanted to do ...',<sup>274</sup> as opposed to what it had to do. However there are evidently problems with obtaining staff as there are '... big delays in getting staff, two years too late for one project, and enlargement must be given the resources it needs. For the staffing problems no new initiatives have been taken thus risks are taken with project quality.'<sup>275</sup> The problems with staffing seem to have influenced the policy decisions taken by the DG, there was said to have been a 50% increase in daily dealing with the NMSs with '... huge demand on the geographical desks for (explanations and instructions) of how rules should be applied, with the resultant work more complex. ...'<sup>276</sup> This resulted allegedly in DG problems, 'the DG faced recently the possibilities either to do less since it had no more staff and to give up work to the MSs; to get more staff or to make development agencies in the MSs to distribute funds ... this idea (the last one) existed for a while but it would have been bad to the DG ... DG REGIO began to fear that they were becoming unnecessary and therefore opposed the idea.'<sup>277</sup> This was despite the fact that the DG received more staff than most owing to the enlargement, but they seem to have been inadequate for the tasks as well as inadequately used. Part of the problem seemed to lie in the inability of the DG to shift the staff it has from one less over worked directorate to another where they would have been most needed.<sup>278</sup> There is apparently a fair amount of discussion between Desk Officers and the cabinet, and the management meet once a week in a fairly con-

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<sup>271</sup> See note 6 Bache, (1998) p.35-36

<sup>272</sup> Interviews with Commission Officials: DG REGIO

<sup>273</sup> *ibid*

<sup>274</sup> *ibid*

<sup>275</sup> *ibid*

<sup>276</sup> *ibid*

<sup>277</sup> *ibid*

<sup>278</sup> *ibid*

vivial manner, however there have been problems between the director generals and the Commissioners.

#### 8.4.1 MS INFLUENCE

The first Commissioner of the Regional Policy portfolio after an enlargement was the UK national George Thomson and this set a pattern that would be followed later.<sup>279</sup> Recipient MSs have been keen on having one of their nationals in the top ranks of the DG and or as Commissioner. With the Mediterranean enlargement the main recipients came from this area and so their nationals were to be placed high up in the DG and the policy area. The DG is '... still Franco phone, southern and speaking French. The majority of the over 40's speak French and under 40's English ...;' however it has been stated to be facing the inevitable which means it '... will become more eastern and less southern as the objective 1 area goes to the east. The 1% group (main contributors) decided this; in addition to Objective 2 this will lead to traditional MSs losing funds ...,' and so '... the NMSs want the central European legal model and their style is more northern European.'<sup>280</sup> The DG has been linked to the habit of some MSs 'flagging' certain DGs which they consider to be very close to their national interest; Spain is said to have flagged DG REGIO.<sup>281</sup> It is interesting to note that the Director General for Regional Policy from 1986 up until 2000 was the Spaniard Eneko Landaburu and that the Mediterranean MSs have long had a joint interest in the DG for a range of reasons, not least the Integrated Mediterranean Programmes which were aimed at their MSs. This will be discussed more under the networking section. Poland seems to have understood the need to get its nationals into the highest places of the DG, which is important to its national interest, in ensuring the appointment of their national Danuta Huebner as Commissioner responsible for the DG. It is important in the Commission to have your nationals in place to prevent a policy being negatively directed towards the MS concerned. Although whether that is good news for the DG remains to be seen as, the 'Polish Commissioner thinks Europe is good for Poland but likes liberal economics and dislikes governmental intervention.'<sup>282</sup> Regardless of the recipient MSs' desire to dominate the DG for as long as it was important the DG was stated to have been '... moving away from having a real role ...,' in the CP and to have '... now a more and more macro role dealing with the priorities of funding. More of a German Länder system, money paid to the states and they do the rest, only audited later.'<sup>283</sup> This was the logical consequence of Commission weakness and MS power, influence and their desire to see a re-nationalisation of the CP and or a reduction in the amount of the budget it gained. DG REGIO was stated to have in the recent past been covering broader subjects and to be not so controlling and therefore to have a less legalistic culture.<sup>284</sup>

Valued qualities in Directors were alleged to have changed, in the 1980's Directors were said to have been '... top experts, real specialists ...,' but now '... Directors are just intended to be managers and do not need to have knowledge ... odd as how can a Director negotiate with the USA when there are no experts present with the necessary knowledge; the USA have their experts there?'<sup>285</sup> Directors and some Heads of Unit were alleged to have changed from being top technocrats to being political appointees with '... more political appointments over the 1990's. ...'<sup>286</sup> There was apparently a tendency for MSs to want to appoint politically fa-

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<sup>279</sup> See note 6 Bache, (1998) p.38

<sup>280</sup> Interviews with Commission Officials: DG REGIO

<sup>281</sup> Page, E. *The People who run Europe*, (1997) Oxford, Oxford University Press p.52

<sup>282</sup> Huebner H 'The future of the cohesion policy after the European Council' speech 05/436 Centre For European Studies 12.07.2005

<sup>283</sup> Interviews with Commission Officials: DG REGIO

<sup>284</sup> *ibid*

<sup>285</sup> *ibid*

<sup>286</sup> *ibid*



voured individuals to top positions in the DGs thus the 'Hierarchy are more exposed to the political levels of the MSs.'<sup>287</sup> One official alleged that the appointments of Directors apparently baffled many and that expertise did not seem to be the deciding factor; at least one Director was actually said to have created problems for the DG.<sup>288</sup>

In some ways the DG seemed to be rather vulnerable to MS takeover. It has a habit of MSs taking over bits of it, like the national geographical desks. These are alleged to go through cycles of being 'nationalised' with the nationals of the MS they are serving coming to dominate the unit concerned as the next quotation states. 'Geographical desks have lots of autonomy and have their own styles; nationals from these countries dominate (in them).'<sup>289</sup> This happened with Spain and was happening with Poland. Seemingly this is a natural progression on the one hand, since cultural and language contact were thus facilitated, on the other there was stated to be real danger of conflict of interest situations taking place.<sup>290</sup>

The policy making directorate was allegedly the most unchanged part of the DG. This is said to be good for continuity but bad for new ideas and so progress, and 'counter productive' also, since French points of views were always heard and had been followed since the 1980s. The French for their part were alleged to support the DG ' . . . since money was paid to distant French colonies the same goes for Spain which provides for indirect funding of the colonies and does not appear in national French official budget;' and again 'The French policy making directorate is more in favour of the French geographical unit.'<sup>291</sup> Whatever other problems might be related to the policy making directorate, the most criticised element was alleged to be their addiction to ' . . . grand designs and dislike of details, the concept comes first and is then put into real world. Policy made by policy units is impractical policy and short term and fails to consider implementation.'<sup>292</sup> One of the measures that the policy making directorate came up with apparently aroused annoyance, 'caused friction,'<sup>293</sup> with the geographical units was the so called n+2 policy. This aimed to force recipient MSs to spend the funds allocated within two years or lose them. This was seen by many within the geographical units as a major problem and utterly unrealistic particularly where the NMSs were concerned, 'NMSs feel the n+2 rule is aimed against them.'<sup>294</sup> These views were shared by some of the officials both in the geographical and horizontal units, ' . . . the policy directorate follow the French model and dream up policy without asking Desk Officers. The n+2 idea was not reality based . . . the division between the policy making and implementation parts of the DG makes it less than practical. There is no feed back and there is not a tightly knit together relationship between policy makers and paying desks.'<sup>295</sup> It was alleged that the policy was decided on ' . . . to please some MSs and so to get the overall Cohesion Policy through, with the stated aim of getting money invested evenly.'<sup>296</sup> More on the policy making directorate is included under the Enlargement and Policy Network section.

#### 8.4.2 DG BUREAUCRATIZATION AND RE-CENTRALISATION

The DG was alleged to have had a situation where there was a ' . . . lack of a strong centre . . . , ' and ' . . . its Directors are very autonomous . . . , ' which maybe accounts for the lack of co-

<sup>287</sup> Interviews with Commission Officials: DG REGIO

<sup>288</sup> *ibid*

<sup>289</sup> *ibid*

<sup>290</sup> *ibid*

<sup>291</sup> *ibid*

<sup>292</sup> *ibid*

<sup>293</sup> *ibid*

<sup>294</sup> *ibid*

<sup>295</sup> *ibid*

<sup>296</sup> *ibid*

herence that at times was alleged to have existed within the DG itself. In part the split was inevitable given the radically different tasks that the various elements perform and that the two key elements of the DG, the geographical and the policy making directorates take precedence at different stages in the CP cycle. When negotiations are underway at the beginning of the budgetary cycle, then the policy and horizontal directorates are most influential then 'eighteen months' later, the geographical directorates take over with the implementation of the agreements as the next quotation states. 'If spending is priority then power goes to the geographical desks; if negotiations are priority then power goes to the horizontals and centre.'<sup>297</sup> It would seem logical that staff would be moved about in the DG to cover for the times when the various elements are most busy but ' . . . even when little policy conception work is happening, staff are not moved from them (the policy making units).'<sup>298</sup>

The DG seemed to be centralising itself<sup>299</sup> and 'in the last 6 months there has been an aim to strengthen horizontal services.'<sup>300</sup> The growth in horizontal units reflected the need to coordinate the DG better and the fact that during ' . . . periods of reform the horizontal units have more power whereas routine periods benefit geographical units.'<sup>301</sup> A further reason was that there was now a greater emphasis on inter institutional and civic society dialogue and coordination that there had been, 'when she joined, this process was already happening but now there is 25% more EP, Council and lobby group contact.'<sup>302</sup> There had allegedly been a steady increase over the last ten years in the number of horizontal working groups and in the various institutional aspects of horizontal origin. One explanation for this is that the DG wanted to increase its 'thematic approach' rather than concentrating on one project after the other. This method would involve other DGs more in DG REGIO's work.<sup>303</sup> Another reason was that the ' . . . financial circuit in the DG is far more complex since 2000 and has resulted in a large increase in work for the legal and financial units.'<sup>304</sup> The fall of the Santer Commission and the advent of the Prodi one allegedly saw an increase in 'fear management' with a heavy emphasis on decentralizing responsibility to the DGs which also had to implement more stringent financial controls and the Kinnock staff reforms. The horizontal units were alleged to be more hierarchical than the geographical ones with the Director General more ' . . . directly involved as they (and the matters they deal with) are more sensitive.'<sup>305</sup> For a portion of the DG, in particular probably the geographical directorates, the move to a more 'thematic approach' was alleged that it ' . . . could be seen by some as power structure building. . . .'<sup>306</sup> An official stressed ' . . . thematic coordination is absent.'<sup>307</sup> Whatever else, there has been a growing cleavage between the two parts of the DG and tension as a result.<sup>308</sup>

The hierarchy of the DG has allegedly become more centralized in recent years, placing a growing emphasis on Desk Officers performing certain tasks and reducing their freedom to choose, and attempting to control Desk Officers more as the next quotations show. 'There is an attempt at control of Desk Officers but it is difficult to find the right control, hard to find good managers . . . ,'<sup>309</sup> and 'they are trying to standardise Desk Officers with (task) list conformity and internal audits; procedures are taking over everything; writing good briefings is

<sup>297</sup> Interviews with Commission Officials: DG REGIO

<sup>298</sup> *ibid*

<sup>299</sup> *ibid*

<sup>300</sup> *ibid*

<sup>301</sup> *ibid*

<sup>302</sup> *ibid*

<sup>303</sup> *ibid*

<sup>304</sup> *ibid*

<sup>305</sup> *ibid*

<sup>306</sup> *ibid*

<sup>307</sup> *ibid*

<sup>308</sup> *ibid*

<sup>309</sup> *ibid*



played down.<sup>310</sup> There was a suspicion raised by a few that the Kinnock reforms were aiming to turn the staff into civil servants and that ‘ . . . reforms will be passively resisted since those at the top are as bad or worse than before; merit is not rewarded. Parachutage is used more now than before. Kinnock and Prodi have done this more than before, and so rewarded people for favours done.’<sup>311</sup>

The various reforms seemed to follow the general Commission pattern and were made into whatever was convenient for the DGs. The Kinnock staff reforms created a lot of extra work for the management and no doubt generated some positive effects, but the Commission seemingly managed to turn them into a bureaucratic exercise. Heads of Unit were allowed to allocate performance points to staff in their yearly assessment, but Heads of Unit ‘ . . . are instructed to keep to the average; this is an odd way of rewarding.’<sup>312</sup> The aim of the points system was to give power to reward for merit to those that are closest to the staff concerned, in practice the Director General changes the ‘priority points’ which are the points crucial for careers.<sup>313</sup> The Kinnock reform required mobility of staff, in practice allegedly the ‘ . . . the Director General used DG reorganisations as a means of nullifying or ameliorating the Kinnock reform on mobility.’<sup>314</sup> Staff seem to be formally moved and reorganised but remain in the same place.<sup>315</sup> At times in the Commission staff are apparently moved but take their jobs with them.

The problem of the Kinnock and general financial reforms, resulting from the fall out from the end of the Santer Commission, led to a dramatic increase in bureaucratic procedures which caused delays in much of the DG’s work. The DG was said to have already been overworked in 1999 with the increasing work that the enlargement was bringing and then came ‘ . . . more rules and procedures . . . less time was available to spend on developing quality.’<sup>316</sup> The Director General allegedly first in ‘January told staff to develop projects, then in October he told them to just spend the money regardless of the quality of the projects, just get it administratively correct.’<sup>317</sup> This was said not to have been useful for enlargement, ‘there is a problem of project management quality, versus procedures which was not beneficial for enlargement but there were two sides to this. They were needed for the role model approach of Commission; but there was an over-kill in procedures.’<sup>318</sup> This ambivalence towards the reforms was standard, they were maybe a ‘ . . . good idea but there must be resources to achieve them . . . there was a big waste in time and delay in making payments.’<sup>319</sup> Each financial reform that there was ‘ . . . doubled the amount of paper work.’ The latest reform ‘ . . . has been exaggerated and over done . . . they are being hamstrung by the financial regulation.’<sup>320</sup> The geographical desks and in particular their Heads of Unit were alleged to have suffered from the reform, ‘ . . . there are a lot of problems of bureaucratic procedures and geographical desks can not develop newer roles they are so overloaded with cumbersome procedures. . . .’<sup>321</sup> What is more, many Heads of Unit apparently had to perform more and more procedures for the Secretariat General which were sometimes duplicating what was already done. This organisation which aims to coordinate the DGs and thus the Commission had recently taken over the activity based management which the Director

<sup>310</sup> Interviews with Commission Officials: DG REGIO

<sup>311</sup> *ibid*

<sup>312</sup> *ibid*

<sup>313</sup> *ibid*

<sup>314</sup> *ibid*

<sup>315</sup> *ibid*

<sup>316</sup> *ibid*

<sup>317</sup> *ibid*

<sup>318</sup> *ibid*

<sup>319</sup> *ibid*

<sup>320</sup> *ibid*

<sup>321</sup> *ibid*

cently taken over the activity based management which the Director Generals had previously performed, with the result that '... managers make two lots of reports now, modules were set up in a bad bureaucratic manner. The agenda planning of the SG was a good idea turned into a bureaucratic disaster. What was meant to be a meeting turned into a one and half hour SG monologue and giving of orders for the 60 participants.'

The standard use of DG reorganisations is formally to '... lead to a more strategic basis,' but also allegedly conveniently provides the opportunity for '... informally squashing people ... ,' and '... staff are stopped informally. ... '<sup>322</sup> Staff changes are carried out partially using the reorganisation as an excuse. This is also apparently a favoured method of changing policy in the Commission as a whole, change the people involved and so change the policy. Staff in the Commission and the DG are said to have a sort of '... feudal right to a job, once you accept it you sort of own it.'<sup>323</sup> This makes major reorganisations allegedly justified in terms of strategy they are simply the '... only way to move people.'<sup>324</sup> A further motive for reorganization seemed to have been to create posts or to justify creating management posts, since a Director has to be in charge of a certain number of units. Units are deliberately created to allow for a Director's position. Something along these lines appeared to have been involved in the DG's re-organisations 'job creation' and the need to create new positions was seemingly behind the new directorates, '... it would have been better to have had more vertical (geographical) and not more horizontal ones.'<sup>325</sup> Similarly to DG AGRI, the DG and, in particular, elements of it remained oddly insulated from the reorganisation despite major changes in the policy they dealt with. Most of the important people in the DG were said to have remained unchanged and in particular this was said to have been the case for the policy making directorate. A more general reorganisation in 2000 was stated to have been desirable in particular for the enlargement, unfortunately it seemed to have been half hearted and was a 'missed opportunity.'<sup>326</sup>

Rather than the DG integrating the enlargement into the DG a special directorate was created for the NMSs. It insulated the rest of the DG from the enlargement in the short term but meant that old MS geographical units which could have helped the NMS ones with their experience did not, and the 'wheel had to be reinvented' and this caused delays.<sup>327</sup> Somewhat bizarrely the DG got '... the lion's share of auxiliary staff,' from the NMSs since it was the leading DG in the enlargement area, but instead of allocating them to the units dealing with their countries, and so benefiting from their cultural, language and network skills and contacts, they put them everywhere else. The reason for this was because allegedly '... the DG did not trust them ... they separated them from their national units for security and sensitivity reasons.'<sup>328</sup> Other DGs did not follow this way of doing things and DG REGIO's approach created '... problems for the final policies.'<sup>329</sup> One possible partial explanation for this was that there was resistance to the nationalisation of geographical desks to ensure financial integrity. But the old MS units do not appear to have abided by this rule. Given the stated problems that the Commission had in obtaining staff at all and its problems with language skills, the translation service had been said to be collapsing or to have collapsed, the decision to squander the resources at its disposal seemed as odd as the officials all stated. This is particularly true as the 'sensitive post mobility rule' (staff handling finances were usually in positions defined as

<sup>322</sup> Interviews with Commission Officials: DG REGIO

<sup>323</sup> *ibid*

<sup>324</sup> *ibid*

<sup>325</sup> *ibid*

<sup>326</sup> *ibid*

<sup>327</sup> *ibid*

<sup>328</sup> *ibid*

<sup>329</sup> *ibid*



sensitive and so had to be moved every five years at the latest) would apply to officials in the units anyway, and in these units it was applied strictly.<sup>330</sup>

The lack of a more fundamental reorganisation in 2000 allegedly had a serious negative effect on the enlargement which is discussed under the Enlargement and Policy Network section, 'there is a natural resistance to change and we have suffered from it, 3 Directors were involved in the re-organisation of 2004 and now the DG had to seriously consider the NMSs but it was too late.'<sup>331</sup>One possible reason offered for the absence of this type of re-organization in 2000 was that the '... delay in reorganising (was) owing to inertia in the system.'<sup>332</sup>The 2004 reorganisation appeared to have been directly related to an attempt to coordinate the DG better, but again it was stated to have been 'too late' for certain key enlargement aspects and policies like ISPA.<sup>333</sup>

## 8.5 COMMISSION FRAGMENTATION

A much criticized aspect of the Commission is the ability of the DGs and their various sectors to work together in the interests of the institution as a whole. There were said to be struggles over CP between DGs described as a 'brutal battle' with the struggle between '... a deeply rooted conflict of ideas and ideologies. Actors were often motivated by a number of issues: more or less supranational control; more or less Europe of the Regions; the prevalence of one DG over another; the need for a mobilizing idea for the Commission versus running things efficiently; public intervention versus free market, and career concerns.'<sup>334</sup>In the CP 'ideological domain' essentially the positions were of those who wanted to place the emphasis on: supporting the efficiency of markets; solidarity with those that might suffer from the market integration using the regions as key partners; extending democracy into the policy decision making.<sup>335</sup>The need for '... internal Commission reform ...,' had become; '... enmeshed ...,' in the discussions about the future of the CP. One group the 'reformers' was for '... simple and effective management ...,' and so a '... radical restructuring of cohesion policy. ...' But DG REGIO amongst others '... remain fiercely opposed to such wide scale reform and continue to favour a "grand vision" of cohesion policy.'<sup>336</sup>

Conflicts between DGs was and is all too normal 'there are political contests between DGs; DG EMPLO has no overall policy goal with social funds; DG REGIO fights with DG EMPLO and there are problems for NMSs in terms of employment and training etc.'<sup>337</sup>The struggles between DG Enlargement and DG REGIO seemed to be well known, but the Sapir Report and the sudden vulnerability of DG REGIO apparently brought out the worst in the other DGs; '... the other Commissioners were not helpful and did not support DG REGIO ... Commissioners wanted to take over projects from DG REGIO and did not see that the MSs were the only winners.'<sup>338</sup>Allegedly some DGs like DG ENT and to some extent DG ENV have a policy agenda but no money to further this agenda, and would like to have it directly rather than going through the filter which is DG REGIO. The existence of funds seems to

<sup>330</sup> Interviews with Commission Officials: DG REGIO

<sup>331</sup> *ibid*

<sup>332</sup> *ibid*

<sup>333</sup> *ibid*

<sup>334</sup> Hooghe L. *The Commission and Cohesion Policy* in Nugent, N (ed) *At the heart of the Union*, second edition, (2000) Basingstoke, Macmillan Press, 2000 p.98

<sup>335</sup> *ibid* p.98

<sup>336</sup> See note 44 Peterson; Bomberg (1999) p.171

<sup>337</sup> Interviews with Commission Officials: DG REGIO

<sup>338</sup> *ibid*

have had a strong attraction to other DGs, 'DG REGIO has financial instruments and DG ENT policies. If DG REGIO does not get more influence it will lose money from CFs; it must show that economic growth and employment are linked to it or otherwise DG ENT will get the money instead, the MSs want this to happen.'<sup>339</sup> One way of looking at this is that some of the DGs should be allowed to receive funds directly and thus avoid the duplication which going through DG REGIO involves,<sup>340</sup> but understandably the DG is not over enthusiastic about this possibility. The Sapir Report and its aftermath revealed two points, firstly that 'DGs are not well integrated,' and secondly that the practical value of 'DG REGIO's work is unknown in the Commission, other DGs push their policy agendas more and use the budget to promote them. DG REGIO does not have the highest profile, now that delivering the Lisbon agenda could be assisted by DG REGIO.'<sup>341</sup> There has recently been a major attempt at improving this, in particular by DG REGIO promoting itself and its policy to the other DGs, in part as an attempt at survival. The drive to achieve these goals is proof in itself that there was a major problem beforehand which needed addressing. One official alleged that 'Inter institutional matters are as bad as ever. As of summer 2004 other DGs will be brought via the thematic approach into the heart of DG REGIO.'<sup>342</sup> This goal of involving other DGs more in the allocation of funding and so assuaging some of their thirst for them, seems to have had some success; 'the DG has been able to sell itself and to show its experience . . . they showed the capacity building and stakeholders built by DG REGIO and they won with this argument.'<sup>343</sup>

The NMS officials rated the inter DG Communication and Coordination very harshly and seemingly rightly so. The respondents were critical about the state of inter DG coordination 'a disaster,'<sup>344</sup> and 'awful.'<sup>345</sup> There was almost unanimity about the poor state of inter DG coordination. The enlargement has not brought any improvement on this front, maybe even the opposite; one respondent stated that it had got worse.<sup>346</sup> One NMS official stated they themselves had ' . . . coordinated well on issues with all ministries involved, but faced five fighting DGs.'<sup>347</sup> Another NMS official explained the chronology of the problem 'DG Enlargement was first then there was DG Enlargement and DG REGIO, but no coordination between them, and then DG EMPL was added and this added to the problem.'<sup>348</sup> Another added ' . . . inter-service consultations are still a problem, slow, they take months.'<sup>349</sup>

Various DG officials interviewed took different approaches when discussing this issue, some accepted that inter DG relations were problematic. Some stressed that the NMSs in particular failed to understand what the DGs really meant when they said things; 'NMSs misunderstood DG REGIO's 'yes' as meaning yes for a project, when it only meant yes to prepare for a project. The whole of the Commission must be involved in structural funds,'<sup>350</sup> and 'NMSs think DG REGIO is very powerful and the most powerful DG but it is not.'<sup>351</sup> What this seemingly meant in practice was that the NMSs thought DG REGIO had given the go ahead for a project and they began working on this assumption, then they would hear from another DG that this was not the case, or would hear from DG REGIO that another DG had expressed doubts. The different DGs also used different methods when dealing with the NMSs which was stated to

<sup>339</sup> Interviews with Commission Officials: DG REGIO

<sup>340</sup> *ibid.*

<sup>341</sup> *ibid.*

<sup>342</sup> *ibid.*

<sup>343</sup> *ibid.*

<sup>344</sup> Interviews with NMS Officials

<sup>345</sup> *ibid.*

<sup>346</sup> *ibid.*

<sup>347</sup> *ibid.*

<sup>348</sup> *ibid.*

<sup>349</sup> *ibid.*

<sup>350</sup> Interviews with Commission Officials: DG REGIO

<sup>351</sup> *ibid.*



probably be a reason for NMS problems; 'Sometimes DG REGIO and DG EMPLO have different ways of dealing with problems. There is a different focus for DG REGIO, a broader set of players are dealt with and more complex rules used due to a longer policy cycle involving lots of estimates unlike the cash based activities of DG EMPLO.'<sup>352</sup> Some officials emphasised the NMS's lack of ability to understand the Commission's complex systems; '... environmental compliance is very complex for NMSs and related procurement likewise and NMS do not seriously understand how complex,' and 'NMSs have not understood and implemented the environmental acquis and have not put it into force, DG ENV blocks most proposals anyway.'<sup>353</sup> One official stressed that it was the '... policy making DGs,' like DG ENV which cause the problems rather than the paying ones.<sup>354</sup> Another acknowledged the difficulties between DG ENV and DG REGIO.<sup>355</sup>

## 8.6 POLICY NETWORK POTENTIAL

The Commission uses the somewhat confused institutional circumstances that surround it to the full, '... cohesion policy lacks a dedicated Council. Cohesion policy is covered by a variety of Councils and it thus lacks the routinised collaboration enjoyed by ministers and officials in other sectors ...',<sup>356</sup> and so '... sometimes the result is that Council members are not terribly well informed about cohesion policy ... Arguably, once overall funding is set, the Council has played a primarily reactive role, responding to institutional designs drawn up by others, especially the Commission.'<sup>357</sup> The unanimity voting rule can work in the favour of the Commission as it only takes one MS to prevent any decision going through and any major reforms are difficult, since there is a division of the Council into recipient states and contributors. The following quotation illustrates the above, '... a representative from a large "donor" Member States complained: "The smaller Member States have a tendency to latch onto the Commission ... it's my impression that the Commission always has some kind of ally on the Council (which means) the Council is not as strong as it could be institutionally;"'<sup>358</sup> which leaves the general rule being that the Commission is crucial in the 'setting' of CP.<sup>359</sup> The Commission is stated to have '... proved an important ally for those member governments favouring a substantial community role and provided important foundations for later developments.'<sup>360</sup> In its dealings with the Council and the MSs the DG used the standard Commission tactic of desiring to apply "non political" criteria vis-à-vis the MSs who use '... pressure to include regions for political reasons,' but really '... objective 1 decisions will always be political decisions. Moreover the Commission's virtuous insistence on "non-political" technical criteria is itself somewhat misleading: the Commission ultimately is concerned with its own institutional power which lies, not least, in its ability to apply "neutral" criteria.'<sup>361</sup>

Simply, within the European institutions the Commission and thus the DG officials, have considerable scope for manoeuvre and using a network of like minded actors to achieve their goals, at times the defence of the policy itself. It has to be said they have been more than capable of defending their policy:

<sup>352</sup> Interviews with Commission Officials: DG REGIO

<sup>353</sup> *ibid*

<sup>354</sup> *ibid*

<sup>355</sup> *ibid*

<sup>356</sup> See note 44 Peterson; Bomberg (1999) p. 158

<sup>357</sup> *ibid* p. 158

<sup>358</sup> *ibid* p. 158

<sup>359</sup> *ibid* p. 158

<sup>360</sup> See note 6 Bache, (1998) p. 46

<sup>361</sup> See note 44 Peterson; Bomberg (1999) p. 157

'In the Council, the privileged arena for member state interests, Commission officials successfully resisted attempts to weaken the Commission's new policy position. When some member states tried to further erode partnership and to weaken the Commission's role, the Commission negotiators mobilized support in the European Parliament, among a dissenting minority in the Council of ministers (Portuguese, Irish and Belgian governments), and among sub-national governments. This enabled the Commission to largely deflect Member State pressure for further dilution of the reform. Whether one focuses on the tug of war in the Commission or in the Council, Commission officials emerge as actors with access to a variety of power resources. These enabled them to contend for policy adjustments that best suited their interests and ideas.'<sup>362</sup>

The main institutions and actors involved in the CP: MSs, the Commission and the Council are even divided internally as well as there being fluctuating relationships between them and these '... divisions inside these institutions had a profound impact on the policy.' This situation is ripe for Policy Networks as the institutional backdrop seems to fragment, to an extent, into '... sets of political rules which provide the context for a variety of political actors to pursue competing agendas.'<sup>363</sup>

Networks of single units in various DGs were affected by the 1988 reform of SF and resented it but were outmanoeuvred by '... a small group around Commission President Jacques Delors.'<sup>364</sup> This Group then developed a DG (Co-ordination of Structural Policies) and gathered a '... coalition of Commission actors favouring an integrationalist conception of cohesion policy ...,' which was resisted by '... a coalition championing a more flexible, decentralized cohesion policy.'<sup>365</sup> DG REGIO was a key actor in this latter coalition which finally won, and DG Co-ordination of Structural Policies was disbanded.<sup>366</sup> It won the battle by regaining the initiative and '... by exploiting its hold on the purse, by relying on contacts with national and regional authorities, and by using its relative autonomy in policy direction, administrative organization and personnel policy to restructure on its own terms.' The power of small numbers of determined actors working in and with a Policy Network is clear, 'Individuals or small groups matter. "The structural funds were developed by three people. The opposition was total ..." The preferences or motivations of Commission officials matter ... Rules constrain powerful actors, but actors can also change rules. Specifically, they can use existing rules to institute new ones that place them in a more strategic position to pursue what they want.'<sup>367</sup> DG REGIO, or probably groups inside it, was very able to activate and use a Policy Network to oppose even the Commission President, a point which cannot be stressed enough.

DG REGIO has been examined by and held up as an example of MLG and thus Policy Networks, indeed it has been said to have considerable Policy Network potential whether defined as dual networks or tri-level networks.<sup>368</sup> CP has long been considered to be an area of Commission activity where the Commission has considerable autonomy and a range of actors with whom it can choose to work and who can choose to work with it. The following quotation shows this, 'The Commission had become used to interacting with institutions, networks and lobbies of organized actors from sub-national authorities and interests in the operation of re-

<sup>362</sup> See note 334 Hooghe (2000) p.95

<sup>363</sup> *ibid* p.96

<sup>364</sup> *ibid* p.94

<sup>365</sup> *ibid* p.94-95

<sup>366</sup> *ibid*

<sup>367</sup> *ibid* p.97

<sup>368</sup> Ansell, K; Parsons, C; Darden, K *Dual Networks in European Regional Development Policy*, Journal of Common Market Studies Vol 35 No 3 (1997)



gional policy, despite the strengthening of the role of the Member States in this policy area after 1993.<sup>369</sup> The policy involves a range of actors and disburses large funds which inevitably will result in close relationships if not bonds forming between recipients and disburser. The policy has been stated to be one of those where there is real danger of resistance to reform being shown by many of the actors. This is likely to grow in particular as pressure mounts for such a reform:

‘A policy which consumes a third of the budget has inevitably yielded powerful constituencies. In many cases, the institutions setting policy, and the networks shaping it, will resist change. High-level intergovernmental bargaining will in part be constrained by resistance on the part of actors reluctant to forgo the financial prizes or institutional power enjoyed under the existing cohesion policy framework. In short, radical change in cohesion policy may be inevitable, but it will not occur without a fight, and one not just between Member States.’<sup>370</sup>

Given that the enlargement and the reforms of several key policies and the Commission itself have been so closely connected, the enlargement could be expected to be involved in any severe case of reform resistance.

Within Policy Networks there is considerable power located at the lower levels. A lot of the policy is ‘... decided or molded by networks of actors,’ where the drawing up of regulations and programming is concerned, before the inter institutional bargaining stage is even reached,<sup>371</sup> with decisions made by these officials which ‘... restrict or shape intergovernmental bargaining.’<sup>372</sup> The actors in these networks are said to ‘... typically include Commission officials, Sub-National Authorities (SNA) representatives, national civil servants within COREPER, MEPs, interest groups and private actors.’<sup>373</sup> Particularly powerful groups are stated to be ‘... key players ... ;’ one important one was called ‘Groupe des Amis’ and was made up of MS representatives and senior Commission officials. These are some of the ‘“actors” within cohesion networks ... ,’ who ‘... shape policy behind the scenes.’<sup>374</sup> There are many cohesion networks which vary in ‘... form, size and influence, across and between member states,’ often they are ‘... tightly knit and can mobilize within their member states, across member states or across governmental levels to shape EU policies.’<sup>375</sup> They have had some considerable successes like the creation of the Committee of the Regions, also the ‘... inclusion of Article of 203 ... ,’ of the Maastricht Treaty.<sup>376</sup> Some networks seemingly emerge from the actual system of structural programming which encourages vertical networks with Commission, MS and SNAs officials closely involved. The bargaining in the networks is for ‘... information, legitimacy, constitutional ... ’ factors.<sup>377</sup> Networks involved in the implementation of the policy are also able to shape the regulations in the first place. The Commission itself is vulnerable to networks and their power. A commercial network ‘... forced the Commission to rewrite regulations to prevent abuse of structural fund regulations;’ prior to this companies had ‘... shopped around,’ to find areas for opening a factory where they would benefit from SFs. Other networks of national and private actors were able to effect changes in the policy.<sup>378</sup> SNAs have formed coalitions amongst themselves and with MSs to

<sup>369</sup> See note 116 Hughes; Sasse; Gorron (2004) p.532

<sup>370</sup> See note 44 Peterson; Bomberg (1999) p.172

<sup>371</sup> *ibid* p.163

<sup>372</sup> *ibid* p.155

<sup>373</sup> *ibid* p.163

<sup>374</sup> *ibid* p.164

<sup>375</sup> *ibid*

<sup>376</sup> *ibid*

<sup>377</sup> *ibid* p.166

<sup>378</sup> *ibid* p.167

force the Commission to change elements of the policy.<sup>379</sup> MSs see the regions as being useful to bring the Commission around to their way of thinking as ‘... the Commission listens more to regions than to member states ...’<sup>380</sup>

At times the structures that the EU and MSs have proscribed seem to also invite problematic networking at the lower levels. The partnership principle is seen in particular as a problem, as it is ‘... laborious to administer, and vulnerable to clientelism and corruption (Hooghe 1998:465);’<sup>381</sup> and ‘allocating the entire responsibility (for management, payment and certification) to a single authority, even in the form of different departments, may lead to conflict of interest, unless their operational independence has been safeguarded in advance. Some departments even combined several functions.’<sup>382</sup> This sort of informal network atmosphere can be described as that of ‘gentleman’s agreements’ which has been criticized, ‘The Commission agrees with the court that changes to the administrative division of regions on the basis of “gentleman’s agreements” with the national statistical institutes is unsatisfactory.’<sup>383</sup>

Within the DG itself there was evidently potential for networking. As was stated earlier the DG has been linked to the habit of some countries to ‘flag’ certain DGs which they consider to be very close to their national interest; Spain was said to have flagged DG REGIO.<sup>384</sup> The Spanish Director General for Regional Policy up until 2000, was clearly aware of the political economic compromise that the funds represent; ‘Regional policy is the cement which allows bigger ambitions like the internal market and economic and monetary union to take place.’ He is also seemingly more on the side of the old MSs recipients of the funds, ‘... the bill for eastern Europe should not be paid by southern Europe - by reducing aid to Portugal, Spain, Italy and Greece - but by all EU countries ...’<sup>385</sup> From the 22 top members of staff surveyed in 1992-93, two thirds were from the southern European MSs.<sup>386</sup> For those MSs involved in the Integrated Mediterranean Programmes set up in the mid 1980s only seven officials originated from the contributing MSs. The Committee of the Regions was also under the Spanish leadership of Jordi Pujol through the nineties, and made at least one ‘... overly ambitious report,’ during this period and is expected to see its consultative role strengthened further; interestingly the Commissioner ‘... established a policy of consulting the committee more often than required by treaty, and set up a “code of conduct” for Commission-committee relations. ...’<sup>387</sup> Commissioners are often, if not usually, acting on the worked out policies of their services and of course the Director General.

## 8.7 ENLARGEMENT AND THE COHESION POLICY

### 8.7.1 PRE ACCESSION PHASE

In order to get some feeling for the likely future interaction between Commission and NMSs in the CP area, the critical ‘pre accession’ phase reveals many of the strengths and weaknesses of the actors and the governance structures concerned. Two pre-accession instruments were set up, ISPA and PHARE aiming to prepare the NMSs to manage the SF and the CF; ISPA

<sup>379</sup> See note 44 Peterson; Bomberg (1999) 168-169

<sup>380</sup> *ibid* p.169

<sup>381</sup> *ibid* p.171

<sup>382</sup> See note 188 Court of Auditors, Special Report No 7/2003 p.19; § 66

<sup>383</sup> *ibid* p.28; § 10.

<sup>384</sup> See note 281 Page.(1997) p.52

<sup>385</sup> *European Voice* vol.1 No.10 1995 *Bridging the gap between rich and poor*

<sup>386</sup> See note 281 Page.(1997) p.60

<sup>387</sup> See note 368 Ansell; Parsons; Darden (1997) p.369



concentrated on the ERDF and the ESF whilst PHARE dealt with the CF and the EAGGF. Learning by doing was the method and the instruments confronted the NMSs with the reality of receiving funds from the EU with all the procedures and planning that that entailed.<sup>388</sup> DG Enlargement, staffed largely from DG REGIO and DG External Affairs along with; ‘ . . . departments in national governments with relevant expertise in delivering technical and structural assistance, often at the regional level,’<sup>389</sup> was formally responsible for PHARE but should have had; ‘ . . . a high degree of coordination . . . ,’ with DG REGIO. ISPA was in the hands of DG REGIO which managed it. Both the instruments turned out to be problematic and whether they fully achieved their goals seems to be doubtful.

PHARE was particularly difficult, soon after its outset there was confusion and a seeming lack of coherence in the strategy that was being followed. The two DGs involved quickly began taking ‘significantly’ different approaches.<sup>390</sup> DG Enlargement failed to; ‘ . . . take into account two key aspects of Structural Fund implementation mechanisms . . . ,’<sup>391</sup> despite the fact that PHARE was to a large extent intended to prepare the NMSs to cope with SF leading DG REGIO to state in 2001; ‘There has been quite a lot of confusion concerning the role of the regions with regard to the programming and implementation of the Structural Funds. The “target region” approach has contributed to this basic misunderstanding by initiating a process of programming and setting up of Regional Development Agencies at sub regional level.’<sup>392</sup> The targeting approach was that being followed by DG Enlargement. Small sub-national levels of government were required to manage funds for which they lacked the capacity,<sup>393</sup> under normal SF, small countries like Latvia, Slovenia, Lithuania and Estonia would represent a region and thus the administration would be dealt with by the national government.<sup>394</sup> Finally the DG REGIO method was adopted and the Commission then changed its mind. Thus for a country like Latvia at first it had to follow one series of instructions to decentralize and then this was reversed a couple of years or so later.<sup>395</sup>

Another problem cropped up when DG REGIO decided to adopt for the NMSs a sectoral approach towards the negotiations it was holding with them over operational programmes which contrasted with the approach of DG Enlargement which kept to the regional basis of its approach<sup>396</sup> which it only modified later, and then adopted regions more like those of DG REGIO.<sup>397</sup> The subsequent result was that the programmes were both sectoral for some and others regional, leading to some regions being; ‘ . . . less prepared for Structural Funds.’<sup>398</sup> Where Twinning was concerned the 2000 Twinning covenants were first of all prepared for each region then in 2001 DG REGIO decided to only; ‘ . . . allow one regional Operational Programme per country . . . ,’ which resulted in the covenants having to then be ‘modified.’<sup>399</sup> Thus; ‘ . . . the Commission’s use of the PHARE programme to prepare Candidate Countries for managing the Structural Funds suffered from the lack of a wider strategy identifying both the requirements to be met by Candidate Countries in the field of regional policy prior to accession and the approach to be followed by these countries to structural fund

<sup>388</sup> Court of Auditors Special Report No5/2004, concerning PHARE support to prepare Candidate Countries for managing the structural funds 2005/C 15/01 p. 1 and also p.9; § 17 ‘Overall approach of using the PHARE programme to prepare candidate countries for managing the structural funds’

<sup>389</sup> See note 116 Hughes; Sasse; Gorron (2004) p.232

<sup>390</sup> See note 388 Court of Auditors Special Report No5/2004 p.9; § 18

<sup>391</sup> *ibid* p.9; § 19

<sup>392</sup> *ibid* p.10; § 21

<sup>393</sup> *ibid* p.10; § 21

<sup>394</sup> *ibid* p.9; § 20

<sup>395</sup> *ibid* p.10; § 21

<sup>396</sup> *ibid* p.10; § 22-23

<sup>397</sup> *ibid* p.10; § 24

<sup>398</sup> *ibid* p.10; § 25

<sup>399</sup> *ibid* p.17; § 62

prior to accession and the approach to be followed by these countries to structural fund management after accession.<sup>400</sup>

The Commission's 'Extended Decentralized Implementation System' (EDIS), was intended to be a major move towards making the PHARE implementation procedures more like those of the SF; it involved replacing the ex-ante controls that the NMSs had been using by ex post ones which were more like those of SF. Decentralization of the financial management was intended to give the NMSs practice in having; ' . . . full responsibility for implementation.'<sup>401</sup> However the Commission allowed considerable delay in ensuring its usage, as a result; 'EDIS was not introduced for the management of PHARE funds into any of the Candidate Countries before the accession on 1 May 2004. It meant that Candidate Countries would become Member States less well prepared for the financial management of the ERDF and the ESF than the Commission had intended in the PHARE Review 2000.'<sup>402</sup> It also led to complications and more bureaucratic procedures.<sup>403</sup>

The Sapir Report was quite critical with regard to the enlargement and the role of the Commission. The amount of pre-accession aid actually paid out had in fact been rather low with only 50-70% of the funds allocated to NMSs actually paid out and long delays experienced by recipients with the blame lying both on the NMS side and the EU's.<sup>404</sup> Total pre accession aid was 3.5% of the total budget Agricultural and Structural support combined, and for the 2004-2006 period the NMSs were given around; ' . . . 25% of the structural expenditure going to the current Member States.'<sup>405</sup> The report stated that greater effort will have to be made by both sides and that the EU needed to; ' . . . improve its mechanisms . . . '<sup>406</sup> and; 'The European Commission would also need to improve its expertise on the situation within the NMSs to ensure that their partnership is fully effective.'<sup>407</sup>

Another basic which the Commission intended to see created were the National Development Plans; these would lead to the multi-annual-programming like in SF. However the NMSs' administrations were over stretched already and saw little use in a document which smacked of planned economies, and the Commission for its part allowed very little time to get the documentation ready and; ' . . . made it impossible to establish a proper partnership approach to planning, involving consultation with regional and local authorities and NGOs.'<sup>408</sup> The result was that the multi-annual-programmes were not introduced and the reason for this does not seem to have been adequately answered.<sup>409</sup> In several NMSs (excluding Hungary, Poland and Romania) despite the expectation that they would be using up more funds as their ability to absorb it improved in fact the opposite was the case.<sup>410</sup>

Delay seemed to have been extremely common throughout PHARE,<sup>411</sup> and in part the responsibility seems to lie in complex bureaucratic procedures involving the Commission and the NMSs, as well as in the inability of the NMSs to generate the right documentation for the Commission<sup>412</sup> no doubt partially due to the frequent personnel fluctuations in NMS minis-

<sup>400</sup> See note 388 Court of Auditors Special Report No5/2004 p.11; § 28

<sup>401</sup> *ibid* p.11; § 30

<sup>402</sup> *ibid* p.11; § 32

<sup>403</sup> *ibid* p.12; § 33

<sup>404</sup> See note 7 Sapir Report (2003) p.104

<sup>405</sup> *ibid* p.19-20

<sup>406</sup> *ibid* p.105

<sup>407</sup> *ibid* p.105

<sup>408</sup> See note 388 Court of Auditors Special Report No5/2004 p.12; § 34

<sup>409</sup> *ibid* p.12; § 35

<sup>410</sup> *ibid* p.13; § 40

<sup>411</sup> *ibid* p.15; § 49 and p.18; § 65

<sup>412</sup> *ibid* p.15; § 51



tries<sup>413</sup> as well as the lack of clarity resulting from; ‘ . . . changes in responsibilities between ministries and the internal restructuring of ministries.’<sup>414</sup> The personnel changes in the NMSs of course made the process of training their staff more difficult if not fruitless, particularly where the twinning exercise of MS officials working with NMS officials was concerned.<sup>415</sup> The problems which the NMSs had, were said to; ‘ . . . raise doubts about their capacity to absorb the much greater allocations planned under the Structural Funds.’<sup>416</sup> The final conclusion about PHARE was that it; ‘ . . . had a more limited impact than expected in preparing the Candidate Countries for the ERDF and ESF to the extent the Commission had planned in its policy documents . . . ’<sup>417</sup>

Where ISPA was concerned DG REGIO had administrative capacity problems itself; ‘The Commission’s own capacity to appraise applications and supplementary work carried out by consultants was initially limited by the fact that in January 2000 it had allocated only five A grade officials to ISPA. For by far the largest beneficiary country, Poland, (ISPA commitments of 133 Million Euro in 2000) only one official was allocated to the environment section until November 2001. A further constraint was the lack of engineering expertise in the Commission. To help overcome this, a framework contract was made with the European Investment Bank, whose engineers and economists already had a large amount of experience of Cohesion Fund projects. However, the Commission could not make systematic use of this high quality assistance . . . ’<sup>418</sup> ISPA suffered from delays in contracting matters if the Financing memoranda of the Commission are used as a base line and they are said to have been realistic. The reasons for the delays seem to have mostly lain with confusing and inconsistent Commission procedures and lack of correct personnel in its delegations; ‘ . . . in some cases projects suffered from delayed and inadequate work by consultants financed by the Commission to draw up the tender documentation; initial problems related to different provisions for tender evaluation in the Commission’s decentralized implementation system manual and the new Practical guide which it introduced in January 2001; problems with EBRD co-financing, mainly in Poland and Romania, because of differences between ERBD and Commission procurement procedures which were eventually modified in December 2001. . . . ’<sup>419</sup> Thus the Commission could have done more itself to improve the NMSs much criticized ‘absorption capacity,’<sup>420</sup> whilst this does not mean that the NMSs could not have done more as well.

Whilst the NMSs would obviously be in favour of receiving the maximum amount of funds possible, there is economic theory evidence which indicates that this may well harm them in the longer term and damage their goals of growth. According to some the widely spread assumption that the recent enlargement was very different to previous ones insofar as there are; ‘enormous income gaps’ between current and future members is stated to be ‘incorrect.’<sup>421</sup> This enlargement was not much different in this perspective from previous ones. The case of Poland seems to serve as a warning as it is said to have at first; ‘ . . . followed a well-established EU policy . . . ,’ which reduced labor mobility by encouraging workers to remain in areas of high unemployment and raised minimum wages. The resulting unemployment forced the government to reverse their policies however well meant they were, and this had a

<sup>413</sup> See note 388 Court of Auditors Special Report No5/2004 p.16; § 53,54,55

<sup>414</sup> *ibid* p.17; § 58

<sup>415</sup> *ibid* p.17; § 58

<sup>416</sup> *ibid* p.16; § 53

<sup>417</sup> *ibid* p.18; § 67

<sup>418</sup> *ibid* p.10; § 32

<sup>419</sup> *ibid* p.11; § 36

<sup>420</sup> *ibid* p.13; § 45

<sup>421</sup> See note 105 Boldrin; Canova (2003) p.39 ‘Such commentators have often insisted on the existence of “enormous income gaps” between current and future members. This is incorrect: the current differences between the NMSs and the old MSs are similar, or even smaller, than those that the EU managed to overcome quite successfully during previous enlargements.’

better long term effect.<sup>422</sup> This is said to be one of the problematic aspects of the CP that it encourages a labour immobility and encourages it to go contrary to where the market would otherwise suggest.

Owing to CP's shortcomings, economic theory would appear to suggest that the policy should be discontinued as it currently stands as it is; '... based on incorrect or at least unsubstantiated economic theory, badly designed, poorly carried out, a source of wrong incentives and, in some cases, of corruption. The lack of direct enforcement mechanisms which evaluate the efficiency and the effectiveness of the allocation of funds creates an environment where corruption breeds.'<sup>423</sup> On the positive side the policy might have some; '... indirect benefits for the NMSs ...,' by helping to; '... solidify the democratic rule in the East, help institutional changes, create international partnership and reduce social tensions generated during the transition.'<sup>424</sup> It is here maybe that the policy is justified as an expensive but useful method of securing some of the basics of EU membership as laid out in the Copenhagen criteria, which stressed that the applicant states had to be democratic, stable and able to implement as well as transpose the *acquis*.

One of the main economic dangers that the CP could contribute to if not create, is that it might allow the NMSs to carry out the wrong policies to secure political support by avoiding continuing with serious reform and ameliorating the apparent economic and social situation of some; '... practically, they may postpone the elimination of state subsidies to obsolete and inefficient enterprises, the creation of new or the reinforcement of already existent "income maintenance programmes", thereby reducing labour mobility and providing incorrect incentives to entrepreneurial capital ... may also provide a further reason to delay adjustments in the utilities sector, with negative effects for overall efficiency.'<sup>425</sup> Given the experience of CP in the regions already receiving them, where there is little growth unless as in Ireland there are changes in the national policies too, the NMSs would be better off avoiding the 'trap' that the policy can bring and has already brought to the majority of regions.<sup>426</sup>

Regarding the corruption factor, the NMSs have been struggling with the legacy of communism and the ex communist carve up in which corruption reached high levels, more in some countries than in others; it is hardly in their interest to introduce another source of corruption creation. That said in the pre accession phase funds were directed towards developing the institutions of the accession countries and the developing their 'administrative capacity'; some of the CP funds are to be directed towards institution building as stated under Article 3 paragraph 2 (a) of the proposal for a regulation,<sup>427</sup> but it is only one goal amongst many and not one of the two goals of the policy as suggested by the Sapir Report as discussed earlier. Also the Commission's greater emphasis on evaluation and control in general in the regulation proposal, both confirm the presence of the problem of efficiency and effectiveness, and offer some degree of protection against them. But; '... chains of responsibilities and coordinating bodies can complicate management and control if there is no back up in the form of precise, detailed guidelines and instructions to intermediate bodies on EU rules, the requisite lists of controls and procedures to be followed, this was not always the case.'<sup>428</sup> The problem is that

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<sup>422</sup> See note 105 Boldrin; Canova (2003) p.34

<sup>423</sup> *ibid* p.35-36

<sup>424</sup> *ibid* p.36

<sup>425</sup> *ibid* p.36

<sup>426</sup> *ibid* p.36

<sup>427</sup> COM(2004)492 final p.23

<sup>428</sup> See note 188 Court of Auditors, Special Report No 7/2003 p.19; § 65



the Commission's controls are said to be paper based, administrative controls and that these may well not be sufficient to achieve their stated goals.<sup>429</sup>

### 8.7.2 ENLARGEMENT AND THE COMMISSION

A somewhat surprising fact about the CP element on the enlargement negotiations is that the actual amount of *acquis* that the NMSs were required to take on board was said to be 'thin' as Chapter 21 which related to CP was largely subject to subsidiarity.<sup>430</sup> This meant that where conditionality was concerned there was a lack of precise conditions (conditionality here meaning the use of conditions to assess a NMS) which the Commission could require the NMSs to fulfill. But that did not mean that the Commission would be less active, where there were a lack of formal rules it created informal conditions; '... operational pressures and recommendations,'<sup>431</sup> and these increased proportionately with the absence of the formal conditions.<sup>432</sup> So the Commission made new rules and standards for the NMSs to fulfill when rules were not present. The whole concept of capacity and in particular 'administrative capacity' was expanded beyond recognition, at first it had been only intended to have economic effects later it came to; '... include elements such as legislation and regulation, and, in particular with regard to Chapter 21, the idea of "regional administrative capacity,"' although funnily enough the Commission failed to follow its own stated goals of including regional authorities where the NMSs were concerned.<sup>433</sup> In effect the absence of 'thick' *acquis* allowed the Commission considerable discretion,<sup>434</sup> and did not empower the NMSs apart from extending to them some degree of choice of the *acquis* available. The ability of the Commission to create new goal posts quite apart from moving already existing ones,<sup>435</sup> was fascinating; the following quotation illustrates this; 'The formulaic criticism that the candidates suffered from problems of weak or inadequate "administrative capacity" at the regional level became a mantra for the Commission. It did not, however, set explicit benchmarks for measuring progress towards an appropriate level of such "capacity". Thus in regional policy, an absurd situation arose where the Commission was pursuing a form of conditionality that had a very weak legal basis in the *acquis*, and no definable benchmarks for compliance.'<sup>436</sup>

Oddly enough the Commission appeared to the NMSs to be judging them from the basis, originally at least, of a model, although such a model did not exist. Rather there were differing views about regional policy within the Commission as mentioned earlier, and thus the rules changed as different views prevailed.<sup>437</sup> Logically rules set on paper are less vulnerable to changes in mood and mode within organizations and the opposite also follows.<sup>438</sup> The Commission internal differences have been described as; '... the Commission itself was riven internally by the struggle over competences and in contested visions of regional policy based on departmental interests ...'<sup>439</sup> Here the interests of the departments i.e. the two DGs seem to have been important, no doubt a turf war that got out of hand in the fragmented Commission.

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<sup>429</sup> Interviews with Commission Officials: DG REGIO

<sup>430</sup> See note 116 Hughes; Sasse; Gorron (2004) p.532

<sup>431</sup> *ibid* p.526

<sup>432</sup> *ibid* p.548

<sup>433</sup> *ibid* p.533

<sup>434</sup> *ibid* p.527 '... giving the Commission greater scope for ambiguity in its policy recommendations to the CEECs. Similarly, while thinness of the *acquis* may have reinforced the power of the Commission to make politically determined assessments as to whether a particular country has complied with the conditionality for membership, it also gave candidate countries more leeway over selecting from the menu of the *acquis* in an *ala carte* fashion.'

<sup>435</sup> *ibid* p.524 '... grabbe argues that conditionality involves costs to the CEECs in the implementation of what is essentially a "moving target" within an "evolving process that is highly politicised, especially on the EU side."'

<sup>436</sup> *ibid* p.534

<sup>437</sup> *ibid* p.547

<sup>438</sup> *ibid* p.548

<sup>439</sup> *ibid* p.531

Commission inconsistency was noted by the NMSs who were faced by a dogmatic seeming Commission which was critical of their administrative capacities and; ‘ . . . a general perception among key actors in the CEECs that the Commission was attempting to foist an EU “model” or regionalization on them,’<sup>440</sup> whilst it was itself far from perfect. Denials by the Commission that they promoted a special model or way of doing things does not stand up to the facts. The regular country reports that the Commission made annually on the NMSs, were seemingly critical if countries failed to follow whatever the ‘model’ at any given time was. Unfortunately for some NMSs they changed their structures to fit in with one Commission ‘model’ but when this changed so they were seemingly criticized. The Commission ignored structures and regions already present in some NMSs like Hungary for those they desired to see installed.<sup>441</sup>

All in all the perception of the NMSs was that they were involved in an unequal relationship with a partner which moved or changed the goal posts as it required. One DG official stated; ‘ . . . a “top – down approach” had been imposed from Brussels in the early years of the accession process . . . in the early years PHARE made the mistake of telling them (the candidates) what to do.’<sup>442</sup> The way in which the Commission had pursued some of its policies in particular regionalization one meant that; ‘ . . . the Commission’s leverage on the CEECs to develop regions had been applied “in heavier ways than in previous waves of enlargement.”’<sup>443</sup> The needs and requirements of the NMSs and their regions which the DGs were supposed to be serving as well as the wider EU seem to have been forgotten, or at least put onto the backburner. The Commission officials seem to have been badly informed about the NMSs and so made considerable blunders.<sup>444</sup> It seemed to have been ignored that regional policy was an area where the NMSs were very sensitive to outside interference as; ‘ . . . this was policy area where the enlargement process touched issues of territorial governance that were sensitive for political sovereignty,’ thus it is not surprising that; ‘ . . . there was open resistance to the Commission’s attempts to interfere.’<sup>445</sup> One Estonian official stated the Commission; ‘ . . . saw candidate countries as mice in laboratories . . . anything could be asked of them.’<sup>446</sup> This appears to be explained by the Commission’s desire to make up for; ‘ . . . its lack of power in regional policy in the Member States . . . ;’ which lead to the next statement; ‘There is evidence to suggest that Commission officials, who had been frustrated in an attempt to extend the Commission’s competences in regional policy by the 1993 reform, were motivated to use enlargement conditionality to pursue their particular agenda for the implementation of regional policy in the candidate countries.’<sup>447</sup>

### 8.7.3 ENLARGEMENT AND OLD MS OPPOSITION

Two problems emerged for the enlargement, firstly from contributor MSs which wanted to see the CP reduced and the budget as a whole, and also from the opposition mentioned above and the likely recipient MS support for it. Reductions in payments in general combined with more recipients could only lead to less for old MSs and their lobbies. The CP has often been

<sup>440</sup> See note 116 Hughes; Sasse; Gorrion (2004) p.530

<sup>441</sup> Interview s with NMS Officials

<sup>442</sup> See note 116 Hughes; Sasse; Gorrion (2004) p.539

<sup>443</sup> *ibid* p.540

<sup>444</sup> *ibid* p.540 ‘It had become clear over time that the Commission had to differentiate more between the candidates and between large and smaller countries in particular.’ And ‘Inexperience of CEEC realities on the part of Commission officials was also partly to blame. As a senior official in ISPA observed with regard to the Commission’s role in the regionalisation of Hungary; ‘colleagues from structural funds (i.e.DG Regio) pushed for “regions”. They underestimated the political games and the intricacies they got involved in.’

<sup>445</sup> *ibid* p.536

<sup>446</sup> *ibid* p.537

<sup>447</sup> *ibid* p.531-532



seen though as a means of paying for enlargement in particular where poor 'old' MSs are concerned, payment for those currently receiving funds, as well as for those wanting to join them. The Commissioner for Regional Affairs seemingly fully supported the notion of payments being made, seemingly in particular for the old MSs, almost as a prerequisite for a successful enlargement. In 1996 the Commissioner stated; '... the Union could not take in new members for free. ...'<sup>448</sup> and; 'The Commissioner insisted ... that enlargement was "not conceivable" economically or politically without guarantees to the Union's existing poorer regions.'<sup>449</sup> Whilst MSs had their clear interests in mind when dealing with the enlargement so too did many Commissioners, no doubt representing the perspectives of their DG and so sector but also maybe their national interests too; placing them above the 'objective criteria'<sup>450</sup> decided on and measured by the Commission itself. In the preparations for the Agenda 2000 in 1997; '... some Commissioners wanted to recommend that negotiations should begin next year with only three candidates: Poland, the Czech Republic and Hungary (the Union has already promised to start talks with Cyprus). But Hans van den Broek, the Commissioner in charge of enlargement, argued that, judging by objective criteria, Slovenia and Estonia should be added to the list. He won the argument, but only just.'<sup>451</sup> Political, interest based criteria and not 'objective criteria' play and have played an almost leading role in the enlargement with the Commission itself. The Commission from the start refused to give a timetable for the enlargement but aimed for 2002 for the five best states. The Economist stated; 'However, given the complexity of the negotiations, and the scope for squabbles over related matters of budgets and CAP reform, this timetable looks rather optimistic.'<sup>452</sup> It was correct and it is shown here that the enlargement was bound together with policies such as CAP reform and the CP in which all their related interests and actors would be able to delay things by defending their turf. The problems were not long in coming from the old MSs, with Spain in 1998 threatening to block the research budget, the threat was; '... prompted by fears that it could lose out in the allocation of EU regional funds when the Union expands,' it backed down but only after getting the budget split into two time periods the second of which would be after SF had been allocated to NMSs and it would then be able to renegotiate if necessary.<sup>453</sup> The unfortunate proximity of discussions by foreign ministers in December 1998 where regional aid and the budget were planned to be 'frozen,' which the four cohesion country colleagues were; '... bitterly opposed to ...,' and the Spanish foreign minister stated was 'unacceptable,' to discussions about the progress being made by NMSs was unfortunate, and this sort of problem has pursued the whole enlargement process.<sup>454</sup>

A meeting of the foreign ministers in 2001 had the Spanish foreign minister blocking an agreement; '... on the free movement of workers from the enlargement countries. Spain wants to link its support to a pledge that it will not lose out on regional aid funds to new member states ...,' an approach which the Swedish minister called 'irresponsible.'<sup>455</sup> Inevitably the NMSs began to get annoyed with the process of the discussions about the CP, and the Polish Prime Minister responded to the Spanish demand that it would not see a decrease in its share of the funds after the new members join; Buzek made it clear that from Poland's point of view the absorption limit of 4% was too low and that Poland could easily absorb more funds. He stated that the application of the 4% rule only to NMSs was; '... not acceptable ...,' and would result in the poorest regions in the NMSs receiving less than the old MSs. He

<sup>448</sup> See note 109 European Voice Vol 2 No 29 1996

<sup>449</sup> *ibid*

<sup>450</sup> The Economist *Eastward ho, they said warily* July 17 1997

<sup>451</sup> *ibid*

<sup>452</sup> The Economist *Eastward ho, they said warily* July 17 1997

<sup>453</sup> European Voice, vol.4. No 7 1998 *12 February Research and Development Council*.

<sup>454</sup> European Voice vol.4. No.45 1998 *6-7 December General Affairs Council*.

<sup>455</sup> European Voice vol. 7 No 20 17.05.2001 *News in brief*

wanted the NMSs to be treated the same as the old MSs on the criteria of eligibility.<sup>456</sup> Spain's GDP per person was 80% of the EU average in 2001 Poland's was 35% and Latvia's 27%.<sup>457</sup> Spain; ' . . . though twice as rich as Poland, would probably still get far more regional aid. The Commission estimates that by 2006 the new members would be receiving regional aid worth euro 137 per citizen, against an average of euro 231 for Spain, Portugal, Greece and Ireland. . . . '<sup>458</sup> The Commission; ' . . . is already floating some ideas for buying off the Spanish and the others. Though their structural aid will be reduced, it will not be cut off at one blow.' Other ways of easing the way for Spain that the Commission considered was to; ' . . . use unemployment, still high in Spain, rather than relative wealth as a basis for calculating eligibility;' the SPD of Germany produced a paper suggesting renationalizing most of the funds.<sup>459</sup>

Evidently in 2001 the enlargement was coming into danger as a result of the 'haggling' over the budget; ' . . . the EU's next expansion, first promised in 1990, could be indefinitely delayed, or the applicants could be presented with a deal so unattractive that some will reject it. Opinion polls in Estonia . . . already show a majority of voters opposed to joining the EU.'<sup>460</sup> Again in the same year, Spain tried to trade in favours with France and Germany; the Germans got from the Commission an agreement to restrict movement of labour from the NMSs for seven years, the French wanted a solution to losing CAP receipts; ' . . . the preferred French solution is clear: find an excuse to deny the applicants full access to the farm programme;' the Spanish supported by Italy, Spain and Portugal wanted the CP; ' . . . rules rewritten, to ensure that the subsidies keep flowing.'<sup>461</sup> Certainly the Germans got what they wanted, the Spanish got a phasing out of some of their regions and other compensation and the French got a phasing in period of the NMSs into the CAP.<sup>462</sup>

The Commission in 2002 suggested a solution to the budget difficulties, which entailed for SF a means of limiting the amount to be paid to the NMSs via the 4% absorption rule which would be applied to all MSs but in practice affect only the NMSs.<sup>463</sup> The Third Annual Report on Cohesion Funds of 2004 saw the old MSs lined up to receive 52% of the funds and the NMSs would get 42% with the rest set aside for Bulgaria and Romania. The French Commissioner for Regional Affairs, Commissioner Barnier set out to reassure the old MSs and their regions; ' . . . while most of the poorest regions are in the new member states we still need to help the regions in the 15 present member states . . . the process of catching up is still incomplete.' This led an MEP to say; 'This shows those who said enlargement would be bad news for the regions have got it completely wrong.'<sup>464</sup> The regions referred to were naturally the 'old' MSs' regions, which had been successfully defended at the cost of the NMSs. Spain was still expected to; ' . . . fight to keep as much as it can manage . . . , ' after the 2004 enlargement.<sup>465</sup> The budget question this time over the; " . . . financial perspective for 2007-1013 . . . , " again featured regional aid as a major source of friction with Spain expected to; ' . . . fight hard for their money . . . , ' Britain was said to have been; ' . . . leading a camp demanding a switch of regional aid to the new members from central Europe, plus Greece and Portugal.

<sup>456</sup> European Voice vol.7 No.21 2001 *Polish PM cranks up pressure for huge chunk of aid budget.*

<sup>457</sup> The Economist 6 December 2001 *Don't call me greedy*

<sup>458</sup> The Economist Jan 31 2002 *To get them in, cut the costs*

<sup>459</sup> The Economist May 24 2001 *What should happen to the EU's aid to its existing poorer regions when East European countries with poorer ones join its ranks. The EU is split.*

<sup>460</sup> The Economist May 24 2001 *A matter of priorities*

<sup>461</sup> The Economist May 23 2001 *European expansion hits some snags*

<sup>462</sup> See note 458 The Economist Jan 31 2002

<sup>463</sup> *ibid*

<sup>464</sup> European Voice vol.10 No 6. 2004 *Barnier Unveils Spending Boost for EU Regions*

<sup>465</sup> The Economist April 30.2004 *Policy in the balance*



There is something ludicrous in the Commission's plan to spend over half of EU regional aid in the 15 older members, 13 of which have above average incomes.<sup>466</sup>

The above demonstrates the danger was always present, that reforming the most expensive policies of the Union would be linked to enlargement; it was hoped in a positive manner, with enlargement forcing the policies to reform, but equally the opposite was always possible if not likely; 'It would be nice to think that the prospect of enlargement could be used to force the existing 15 to reform both the CAP and the regional funds in advance, but so far, that is not what has been happening. Many countries would prefer to delay EU enlargement indefinitely rather than sacrifice any of the benefits they currently receive from the EU trough.'<sup>467</sup>The situation was not positive, leading to the statement that the reforms should be left until after the enlargement; 'As things stand, the first new members are unlikely to get in before 2005 . . . Once in, they could help make the rules, rather than having to accept a fait accompli rigged against them. A messy fight might ensue but that might be better than delaying enlargement indefinitely.'<sup>468</sup>This sentiment is repeated with suggesting that linking the reform to enlargement could be a 'trap' and; ' . . . risks playing into the hands of those who would like to delay the EU's expansion indefinitely, ideally keeping the CAP as little changed as possible.'<sup>469</sup>

#### 8.7.4 POLICY NETWORKS, MSs AND RESISTANCE TO ENLARGEMENT

At the early stage of the enlargement process the so called EA agreements were used (Europe Agreements) to guide the NMSs towards the Union and the negotiations for them began in 1990; there were problems at this stage between those who favoured long term political objectives or those; ' . . . under pressure from short-term problems'.<sup>470</sup>Basically DG Enlargement was opposed by DG AGRI and DG Industry; the latter under pressure from their respective sectors, much the same happened in MSs in their governmental departments; although DG Enlargement is said to have also been split between; ' . . . the units dealing respectively with the CEECs and those responsible for trade defence instruments.'<sup>471</sup>The result was that; ' . . . the ability of the sectoral logic to constrain a more politically motivated agreement was greatly facilitated by the fragmentation of the policy process and the lack of close oversight by the macro-policy-makers in the member governments. Defensive sectoral interests were able to insulate specific aspects of the EAs from political pressures for a more generous approach to the CEECs and to set the baseline of what would be on offer. As some of those involved on the CEEC side were able to observe, as fast as they identified issues on which they wanted to press for more open market access, they found that an EU-based lobby had beaten them to the EU negotiators.'<sup>472</sup>Thus even at this stage in the enlargement the Commission was overly easily influenced by sectoral lobbies, and its relevant DGs particularly so; DG REGIO was unlikely to have been any exception to this basic rule. The most powerful lobbying groups in the EU are stated to be those of; ' . . . farmers and recipients of regional aid,' and that 'the prospect of major cuts to pay for increased transfers to the East would provoke opposition . . .'<sup>473</sup>

The Commission is known to be prime territory for networks both internally and as the hub for policy networks. The DG has had a loose if not fragmented structure with little coordination and communication between the directorates. The DG was one of those flagged for Spain

<sup>466</sup> The Economist March 3 2005, *The battle of the budget*

<sup>467</sup> See note 461 The Economist May 23 2001

<sup>468</sup> *ibid*

<sup>469</sup> See note 460 The Economist May 24 2001

<sup>470</sup> Sedelmeier, U and Wallace, H. *Eastern Enlargement in process* in (eds) Wallace, H and Wallace, W. *Policy Making in the European Union* fourth edition (2000) Oxford, Oxford University Press p.439

<sup>471</sup> *ibid*

<sup>472</sup> *ibid* p.439

<sup>473</sup> See note 73 ERT (European Round Table of Industrialists) *The European Challenge* message p.31

and was dominated by those of a southern nationality in the higher posts. Internal networks are of a nationality as well as task based character; in particular in the DG the southern MSs and the French were a likely powerful Policy Network. The French in particular were alleged to dominate the policy-making directorate and to have been more favourable towards the French geographical unit than others. Over the last few years however there was a growing trend towards moving the focus of the policy to the East rather than the south and the English language and all the cultural issues that accompany that becoming more the norm; this was quite clearly a threat for the French speaking, southern oriented officials and DG culture. The enlargement brought with it, hand-in-hand, demands for reform if not abolition of the CP and its re-nationalisation, for many officials the enlargement could have been seen as bringing with it the pressure for reform and general emasculation and it would have been resisted for that reason.

There would appear to have been a nationality, task-based, network possibly including the policy making directorate or members of it and that it was seemingly not over enthusiastic towards the enlargement. Granted the Policy Network aspect of the DGs work, the open opposition to any move from the CP status quo by Spain and other of the recipients and that they lined up with the DG often in opposition to the rest of the MSs showed a degree of coordination that seemingly implied a Policy Network. MEPs and members of other of the European institutions were quite possibly also members of the network. The DG was known to have garnered support for its fight back against the Sapir Report, from amongst the MSs and regions as well as other institutions who subsequently seemingly backed it up. The Policy Network probably also helped the DG survive the fall out within the Commission itself when the DG was under pressure to give up some of its policies when a display of the successful capacity building and stakeholders creation by the DG was used to win the day.<sup>474</sup> The effect of the constituencies, which had close relationships with the officials and stood to lose a lot of support both politically and financially if they were removed from the remit of the DG, on the officials cannot be overestimated; often the officials shared the same nationality as those in the regions and MSs and will have worked together with them for years. The DG will probably have been under pressure to assist the constituencies, regions and old MSs and to pay back any favours made.

Resistance to DG reorganization and so policy reform is seemingly a sort of chicken and egg situation, as if there is not effective reform of a policy then there is also likely to be little staff reorganization at least within the Commission and the same works in reverse, without staff reorganization effective reform of a policy is difficult. Staff who resist policy reform will be unlikely to favour reorganization either, as in the Commission often policy is decided by which members of staff run the dossier. The first reorganization in 2000 following the fall of the Santer Commission introduced a new Director General who was not of southern origin but several of the other important posts allegedly remained unchanged until the 2004 reform and enlargement was apparently conveniently isolated from the rest of the DG in its own directorate unlike in other similar DGs. This failure to reorganize the DG more effectively and to properly integrate the enlargement related units into the structure was allegedly a mistake, and only four years later was it remedied. The lack of efficiency in the DG's handling of the NMSs and the delays and constant reorganizing of their related desks seemed to contrast rather starkly with the lack of change in other parts of the DG; there was something along the lines of a lack of 'administrative capacity' in the DG. It would appear that networks within the DG opposed any alteration of the status quo.

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<sup>474</sup> Interviews with Commission Officials: DG REGIO



In policy terms there are possible indications of the practical effect that the Policy Network had on the enlargement process, in particular before 2000 when the agenda 2000 was being constructed. The n+2 instrument seems likely to have been aimed at the NMSs and made their lives more difficult; the same goes for the absorption level of 4%.<sup>475</sup> Both seem to have been directed towards preventing the NMSs receiving their fair due. The obvious logic behind the 4% rule was that from a fixed limited sum, increasing the number of people receiving from it could only lead to less for those who receive most now. It seems to have been clear to many commentators that the 4% rule was rather over convenient for the old MSs.<sup>476</sup> The introduction of n+2 in 1999 exacerbated what difficulties with absorption that the NMSs had.<sup>477</sup> It was said that its introduction; ‘ . . . may lead to unequal treatment.’<sup>478</sup> There are other details of; ‘ . . . modulation controls and contracts of confidence . . . ,’ which seemingly aimed to favour the old MSs at the expense of the NMSs and which the latter naturally protested against.<sup>479</sup> In particular the fact that over half of the funds were still going to the old MSs despite demands for this to be stopped showed on the one hand that the recipients could wield their power effectively in the Council but since the DG or elements of it have hardly been fighting them in this, and rather came up with the instruments that enabled the status quo to remain to some extent, the DG must be implicated in the result. It is also more convenient for MSs not to be seen to be the ones constantly opposing a policy but rather to encourage the Commission to do this for them, however, the Commission as a whole seemed to have been in favour of some reform of the policy and discussion about it.

The existence of groups within the DG who at times acted in ways which allegedly dismayed their colleagues was spoken of by officials and there were said to be two quite clear groups, some of the policy making group in their directorate which was said to be French/ Mediterranean in its make up and culture, and the so called geographical desks which are said to be Germanic. The policy making group seemingly saw little change in its higher managerial posts for years whilst the geographical desks seemed more liable to fluctuations. The relatively small policy directorate and a small number of officials in it are likely to be those being referred to in the following; ‘ . . . within the Commission, the tension between conflicting policy positions and objectives became more apparent over time and as the enlargement process progressed. On the other hand, the early pressures from the Commission were driven by preferences among some key officials within DG Enlargement and DG REGIO for an institutional design in the CEECs that would embed decentralization and partnership with the regions . . . ’<sup>480</sup> Such key individuals were readily able to direct policy and affect enlargement in one direction and they and or their colleagues could no doubt affect it in another less positive direction if they so chose.

The interviews with DG officials and also with NMS officials seemingly strengthened the notion that a southern European Policy Network had probably had a seemingly negative impact

<sup>475</sup> See note 79 Tarschys, (2003) p.11. ‘As they are introduced to distribution mechanisms built up by the Old Member states, the new arrivals cannot fail to note a number of features favouring the original architects. An example of this is the specific “absorption ceiling” introduced by the 1999 Berlin Council, limiting Structural Policy benefits to any country from the EU budget to a maximum of four per cent of its GDP’

<sup>476</sup> The Economist Jan 31 2002 *To get them in, cut the costs* ‘The proposed solution on regional aid is similar. On current criteria, virtually every region in Europe’s east would qualify for generous EU aid. This would imply either a large increase in the EU budget or a big switch of resources from today’s poor regions in places like Spain and Greece. But the EU invokes a rule that no country can receive regional aid that is more than 4% of its GDP. Any more than that, so the theory goes, could not be safely absorbed. Conveniently, given the small economies of the eastern applicants, the 4% rule would tightly limit how much they could get.’

<sup>477</sup> See note 388 Court of Auditors Special Report No5/2004 p.16; § 53

<sup>478</sup> See note 202 Court of Auditor’s Report on Activities Financed from the General Budget year 2000 p.18

<sup>479</sup> Interviews with Commission Officials: DG REGIO

<sup>480</sup> See note 116 Hughes; Sasse; Gorrion (2004) p.539

on the enlargement.<sup>481</sup> The policy making directorate was alleged to have been problematic for geographical desks and NMSs and the n+2 rule was highlighted as one of the bigger problems.<sup>482</sup> A NMS official stated; 'Geographical units understand NMSs but the centre and policy making directorate then comes into play and then understanding is gone.'<sup>483</sup> More alarming was the statement that there was; ' . . . strong opposition from the DG to NMS regional policy, illegal resistance by the Commission,'<sup>484</sup> and; 'They (the DG) wanted it (enlargement) to go on longer, their experts definitely wanted to keep the Hungarians out, "better for Hungary to have more preparation."'<sup>485</sup> The activities of certain groups and internal networks within the DG made for problems with the enlargement; 'Internal (DG) networks existed which were and could be negative, and were negative to NMSs, technical issues had a big impact, internal networks had a impact on the results of policies and were seen to influence issues on a day to day basis e.g. in the details of implementing system negotiated.'<sup>486</sup>

The Commission and the DG and their internal reforms were alleged to have had a negative effect on the enrolling of NMS staff there is; ' . . . clear resistance by Commission to NMS staff joining and this is a big problem.'<sup>487</sup> DG problems affected a wider group than might have been imagined; ' . . . the problems in the DG caused problems for the enlargement process and problems for NMSs internally vis-à-vis their civil services.'<sup>488</sup> Ironically the lack of internal DG communication and coordination was stated by two of the respondents to have been beneficial for them once they could; ' . . . see what is wrong', evidently it created room for canny NMSs to use to manoeuvre in.<sup>489</sup>

#### 8.7.5 DG AND NMS PERCEPTIONS ABOUT EACH OTHER AND THE ENLARGEMENT

The experience of the enlargement and the manner in which it was carried out have not always been conducive towards creating an atmosphere of trust between the NMSs and the DG. Possible reasons for the DG's behaviour and attitude were given by NMS officials; two of the respondents stated that the DG was full of fear, they were; ' . . . afraid of us,'<sup>490</sup> and the DG is; ' . . . paranoid about NMSs . . . '<sup>491</sup> Others stressed the desire of the DG to 'teach' the NMSs;<sup>492</sup> ' . . . they were trying to fulfill their dreams for old MSs on NMSs,'<sup>493</sup> and; 'They wanted to make sure that Hungary will be blamed for DG mistakes.'<sup>494</sup> One official stated that the; 'Commission wanted political control over all the funds spent and therefore national rules were not accepted.'<sup>495</sup> Another said; ' . . . there is a feeling that old MSs did not have to do the NMSs' controls.'<sup>496</sup> The lack of real Commission understanding of the NMSs was stated to be because; ' . . . the Commission believe that they know the NMSs but they only know them technically,'<sup>497</sup> the corollary of this was the over use of paper administrative tools which was unfortunate; ' . . . the Commission was very worried about the lack of civil service law and

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<sup>481</sup> Interviews with NMS Officials

<sup>482</sup> *ibid*

<sup>483</sup> *ibid*

<sup>484</sup> *ibid*

<sup>485</sup> *ibid*

<sup>486</sup> *ibid*

<sup>487</sup> *ibid*

<sup>488</sup> *ibid*

<sup>489</sup> *ibid*

<sup>490</sup> *ibid*

<sup>491</sup> *ibid*

<sup>492</sup> *ibid*

<sup>493</sup> *ibid*

<sup>494</sup> *ibid*

<sup>495</sup> *ibid*

<sup>496</sup> *ibid*

<sup>497</sup> *ibid*



therefore they issued detailed manuals; they should have put pressure on the Czechs to change their civil service, the Czechs do not understand this.<sup>498</sup> The solution was stated to be that the Commission should have given the responsibility to the NMSs and used their rules. Generally the NMSs felt uneasy or had negative memories and experiences of the enlargement which still rankled; 'NMSs had to do what MSs do not;<sup>499</sup> and; 'The Commission pushed the Czechs to do things they did not want to do and these are now problems.'<sup>500</sup> The Commission was stated to have been; ' . . . too dominant and overbearing.' With regard to the pre accession phase, ' . . . horrible management of pre accession funds, Brussels rules had to be used not national rules;<sup>501</sup> and; 'Some assistance was rejected when requested, the DG was not flexible.'<sup>502</sup> One NMS official stated that DG; ' . . . officials see NMSs as on the moon;' and; 'French officials know more about Morocco than Prague . . . '. One said; ' . . . the Commission was very dictatorial before the enlargement.'<sup>503</sup> The DG's staffing measures were criticized as; ' . . . bizarre, informal Commission staffing methods.'<sup>504</sup>

Regarding the DG's general effectiveness and efficiency, on average it was rated as adequate to good before the enlargement and moderately improved since. Two of the respondents rated Commission leadership of dossiers as needing some or a lot of improvement and either remaining unchanged on the pre enlargement performance or worsening. Particularly good was and are the DG's control mechanisms; 'the DG is fast with audit and control missions.'<sup>505</sup> Also the networks associated with monitoring were graded very highly both the speed with which they were set up and their performance.<sup>506</sup> However internal DG communication and coordination was criticized and most respondents thought it still needed some improvement even after the enlargement;<sup>507</sup> one stated; ' . . . the problem of geographical desks and the policy making gang . . . details are made by the German implementing (geographical desks) gang no one between them, no communication,' and; ' . . . a lack of /no communication between low and middle and top management.'<sup>508</sup>

Generally the DG was considered to have been pretty inflexible and unhelpful with regard to projects with a tendency to double or treble bureaucratic procedures in the pre accession phase.<sup>509</sup> The DG was seen as not really being prepared for the enlargement and needing some improvements.<sup>510</sup> Decision making procedures were seen to be slow and needing improvement.<sup>511</sup> The Commission's methods and project management skills were criticized<sup>512</sup> and these led to; ' . . . long delays and projects not followed.'<sup>513</sup> The DG was said to have been as a whole just adequately supportive of the enlargement,<sup>514</sup> but; 'not enthusiastic.'<sup>515</sup> The DG was stated to have been; 'very inflexible,'<sup>516</sup> one respondent rated the DG as needing a lot of im-

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<sup>498</sup> Interviews with NMS Officials

<sup>499</sup> *ibid*

<sup>500</sup> *ibid*

<sup>501</sup> *ibid*

<sup>502</sup> *ibid*

<sup>503</sup> *ibid*

<sup>504</sup> *ibid*

<sup>505</sup> *ibid*

<sup>506</sup> *ibid.*

<sup>507</sup> *ibid.*

<sup>508</sup> *ibid*

<sup>509</sup> *ibid*

<sup>510</sup> *ibid*

<sup>511</sup> *ibid*

<sup>512</sup> *ibid.*

<sup>513</sup> *ibid*

<sup>514</sup> *ibid.*

<sup>515</sup> *ibid*

<sup>516</sup> *ibid*

provement on this point.<sup>517</sup> Desk Officers and Heads of Unit were perceived to be either adequate or needing some improvement, the top management scored moderately better.<sup>518</sup> Most noted an improvement in the DGs attitude to the NMSs since the enlargement although; some felt they were; ‘ . . . still second class citizens.’<sup>519</sup>

Regarding the decision making situation after the enlargement, the respondents considered the efficiency and effectiveness of the various management groups and comitology committees and the Council in general to be problematic and needing improvement and all actors to be the cause.<sup>520</sup> NMSs and the DG were stated to lack experience and the increase in size made the various groups; ‘ . . . slow and more difficult to make decisions,’<sup>521</sup> whilst; ‘ . . . some take a very long time.’<sup>522</sup> The Commission was said by one respondent to have been strengthened by the; ‘ . . . very lengthy Councils,’ as it could; ‘ . . . divide and rule and the end package is unchanged, there is not enough time to discuss details.’<sup>523</sup> Commission bureaucratic procedures were considered to be; ‘ . . . always increasing although some are necessary,’ and the Commission; ‘is getting more and more power.’<sup>524</sup> There was skepticism about the DG’s goal of simplification; ‘ . . . there is no meaningful simplification, the DG is pushing for more control,’ and regarding the 2013 negotiations; ‘ . . . still limited simplification and financially no simplification.’<sup>525</sup> The NMSs stated that they work together and the Poles; ‘ . . . speak for everyone although they over do it.’<sup>526</sup> The; ‘ . . . focus of regional policy is going to the East,’ according to one of the respondents.<sup>527</sup>

The mixed bag which is the state of NMS ministries was also a cause for concern which the NMS officials openly admitted to. Poland’s size and liking to be independent were stated to be a problem for the DG; ‘ . . . we are big and full of problems therefore we have our own unit,’ administration is very hierarchical although their ministries are said to coordinate well and as a result seem to have ‘been powerful enough’ to deal with the Commission.<sup>528</sup> The Czech Republic does have had some administrative problems and a lack of staff; ‘ . . . unstable administration,’<sup>529</sup> and problems with the civil service remain. The ministries were; ‘ . . . hierarchical and potentially top heavy,’ and the projects; ‘ . . . not of the highest,’ with ‘ . . . expertise missing as staff are badly paid.’<sup>530</sup> The Hungarian situation was said to be no worse than Ireland’s with a strict central administration which they have spent; ‘ . . . 10 years building up,’ but the local level; ‘ . . . is a problem’<sup>531</sup>

#### 8.7.5 DG OFFICIALS VIEWS ABOUT THE NMSs

In general the officials interviewed were sceptical about the state of preparedness of the NMSs for the enlargement and also of the appropriateness of DG REGIO’s controls for the NMSs’ situation on the ground. Some of the comments made were decidedly pessimistic, ‘You cannot trust the information you get from the NMSs. DG REGIO needs to go there and see

<sup>517</sup> Interviews with NMS Officials

<sup>518</sup> *ibid.*

<sup>519</sup> *ibid.*

<sup>520</sup> *ibid.*

<sup>521</sup> *ibid.*

<sup>522</sup> *ibid.*

<sup>523</sup> *ibid.*

<sup>524</sup> *ibid.*

<sup>525</sup> *ibid.*

<sup>526</sup> *ibid.*

<sup>527</sup> *ibid.*

<sup>528</sup> *ibid.*

<sup>529</sup> *ibid.*

<sup>530</sup> *ibid.*

<sup>531</sup> *ibid.*



on the ground. DG REGIO think they know what is happening but they are dreaming . . . the NMSs at the beginning will be a disaster.<sup>532</sup>Part of the problem lies with the; ‘ . . . complex sequence of institutions put into place,<sup>533</sup> with independent agencies to check on governmental administrations, and also municipalities, lots of actors are involved. There is said to be a problem of inter-ministerial coordination in the NMSs, much like the Commission and; ‘ . . . there is an absence of middle aged - middle management in NMSs ministries and this is a problem;’<sup>534</sup>this point has been raised by all the DGs and accepted by most of the NMSs working with them.

Poland was alleged to be extremely legalistic in their approach; when requested for a policy document they produced a statute.<sup>535</sup>Their ministries had a coordination problem;<sup>536</sup>in addition the officials involved in the CP were said to be all young and lacking experience which meant they are inappropriate for dealing with ‘big sums.’<sup>537</sup>A further problem was that the civil service paid badly in Poland and staff turnover was ‘vast.’<sup>538</sup>All the staff currently in the ministries dealing with the DG were said to be ‘consultants;’ Poland was said to; ‘ . . . need control and help in dispensing the funds.’<sup>539</sup>According to one official Poland over performed,<sup>540</sup>which was what the Poles themselves said they were trying to do; ‘ . . . the Commission was obsessed with absorption capacity, the Poles wanted to prove it to them.’<sup>541</sup>Apparently the; ‘Poles got huge advances but are holding them and not spending them, thus no incentive to project proposals . . . , projects are there but not happening’.<sup>542</sup>

Slovenia and Estonia were said to be more advanced than the rest.<sup>543</sup>Slovakia shared the NMS problem of a lack of experts and therefore also a lack of confidence. Staff turnover was high and there was a problem with the separation of the political layer and the administration, there was a lot of very ‘grey’ area. Regarding eligibility questions sent to the Commission, these were said to be a sign of lack of confidence and experts, and the high turnover of staff by NMSs; the Commission said ministries should decide for themselves. Auditing institutions were there but there was a lack of certainty as to whether they would function correctly or not.<sup>544</sup>

## 8.8 CONCLUSION

The DG is another ‘paying DG’ like DG AGRI and was found to be likewise the target for MS attention in every respect. The policy was expected to show both the hallmarks of MS and DG/Commission pressure and interests. Given the very different Presidents who have been involved in the CP it is a useful example to use, to demonstrate the differences of interest between Commission President and MSs at various times.

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<sup>532</sup> Interviews with Commission Officials: DG REGIO

<sup>533</sup> *ibid*

<sup>534</sup> *ibid*

<sup>535</sup> *ibid*

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<sup>537</sup> *ibid*

<sup>538</sup> *ibid*

<sup>539</sup> *ibid*

<sup>540</sup> *ibid*

<sup>541</sup> Interviews with NMS Officials

<sup>542</sup> Interview with Commission Officials: DG REGIO

<sup>543</sup> *ibid*

<sup>544</sup> *ibid*

The general affects of the Commission cycle of MS influence and subsequent bureaucratization would be expected to be visible in the DG. Its changing organisational structure should show increases in hierarchical attempts at control over the lower echelons and this will be examined at length. Policy Networks could be expected to be found in the DG given its similarities to DG AGRI, whether this was in fact the case remains and will be laid out in detail in this chapter.

Furthermore the Enlargement would be expected to have been negatively influenced in various ways; the New Member States (NMSs), the term CEEC is also used to identify this group in the literature, were quite simply outsiders who were forcing changes on a system that had existed happily enough without them. Where large sums of money are concerned there are likely to be large vested interests extremely anxious to defend their allocations against all comers. The CP is unlikely to be any exception to this principle and problems and resistance could be expected from various quarters. At the same time the CP has often been important in assisting poorer regions and MSs to integrate, without its presence the EU might look rather different today.

All in all of course, there were and are, more major difficulties that affected the enlargement process than the just the Policy Networks within the DG, in particular the lack of communication and coordination between DGs created serious problems. It is hard to get a precise estimate of the wasted administrative capacity of the NMSs which was spent on tasks based on inconsistent policies and DG inter service problems but it appears to have been considerable. Given that the NMSs were affected by these policies and that NMSs were criticized as a result, the Commission and DGs own internal problems can be said to have directly affected the enlargement process.

At the level of the individual official; his or her motivations will have a cumulative effect particularly when enhanced by Policy Networks, but maybe more important was the disinterest and disorganization which the DG as a whole showed towards the enlargement process which allowed the  $n+2$  rule and the 4% absorption levels to be put into practice. Some seemingly had 'negative' motives which were more actively linked to defending their policy particularly those most closely linked to its conception and aware of the dangers to it, posed by the enlargement and the Commission President sponsored Sapir Report, which finally forced action onto the DG. Interestingly the Sapir Report came out in summer 2003, and the DG was seemingly desperate for all and any allies; the July 2004 reorganization which followed saw old and new MSs together on geographical desks<sup>545</sup> and the emergence of a more enlargement friendly DG. In between the report and the reorganization, DG officials had probably found support for their response to the Sapir Report amongst the NMSs and of course the enlargement itself had taken place. The reorganization was officially no doubt intended to align the DG to the needs of the new regulation, which was itself seemingly an answer to the Sapir Report, but it was also due to the enlargement. It is tempting to see the reorganization as both a recognition that the NMSs would not tolerate as MSs the system that had served them unfavourably earlier but also a measure of reward, the NMSs had supported the DG through the Sapir crisis. Finally some within the DG, as with the Commission as a whole, have had to accept reality that the enlargement could not be stopped so the reorganization could take place, nothing to lose anymore

It is a pity that the NMSs were caught up in the upheavals surrounding the reforming of the policy or the attempts at achieving this and the probable defensive tactics of Policy Networks. The negative political effect of the miserliness by EU as far as the NMSs were concerned has

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<sup>545</sup> Interviews with Commission Officials: DG REGIO



hardly been ideal for creating a harmonious atmosphere for the development of the EU, most NMS officials were quite cautious about their desires for the EU.<sup>546</sup> The NMSs have been and are facing, a difficult situation where the CP is concerned, and certainly elements of it appeared to have been aimed against them.<sup>547</sup> The political fallout from their treatment may well take years to show; certainly the progress towards ever closer union has not been made any easier by annoying and frustrating the NMSs as much as has been the case. Officials expect that the real difficulties will only emerge as the NMSs become more confident about their positions and gain more information and, no doubt, build up their own networks inside and outside the Commission.<sup>548</sup>

In terms of bureaucratic success the DG has had a rather paradoxically mixed bag of results; its policy has survived for the moment, but for a period it almost looked as though the CP was very much under threat. However it is no longer as able to function independently as it had now that other DGs are becoming more involved in the internal making of policies in the DG, or at least this is intended. The DG has seen its staff resources increasing and as the lead DG in the enlargement it gained the majority of the staff though in an oddly staggered manner. But whether these represent a real gain in the number of staff is dubious since the DG will see an increase in work with the NMSs and the phasing out of the old MSs. The DG has gained two extra directorates and the management positions that they entail, however these are predominantly in audit and finance posts which will control and manage the DG and its officials, and police the policy as with DG AGRI where the auditors are kept separate from the management of the DG.

There were the usual signs of MS influence on the policy and the DG after the end of the Delors period, gradually the CP seemed to be not just moving back into the hands of the MSs, a 'creeping' re-nationalization, but also it had its fundamentals challenged. The DG seemed pretty vulnerable not just to MS influence on the geographical desks and seemingly in the policy making directorate. A Policy Network, or maybe more than one, seemed to be quite able to sour the enlargement process to an extent, and to create problems for the NMSs. The response of the DG, as for the Commission as a whole, was reorganization and bureaucratization, to the extent that efficiency seemed to suffer quite considerably. Unfortunately the network seemed to be quite capable of avoiding the reorganization of 2000 with the result that the policy remained fairly unchanged and the attitude towards enlargement likewise, it was only once the DG was more thoroughly reorganized that a more positive attitude seemed to emerge.

After the increase in bureaucratization there seemed to be signs that the DG was fighting back against its detractors and claiming back territory lost as the proposal for the new regulation shows. Maybe like DG ENV and DG AGRI the DG had not experienced a real cut back but had experienced a clipping of its wings or rather networks, and the enforced realignment of the policy with the priorities of the Commission and EU as a whole via the realignment of the staff within it. A re-launch of itself and its policy seemed to have been on the cards although the final budget reduction dampened this expectation considerably.

As with DG ENV and DG AGRI it is hard to see that the DGs have really benefited from the enlargement, rather there is a real sense that their independence has been and is being modi-

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<sup>546</sup> Interviews with NMS Officials

<sup>547</sup> See note 79 Tarschys, (2003) p.11 'As they are introduced to distribution mechanisms built up by the Old Member states, the new arrivals cannot fail to note a number of features favouring the original architects. An example of this is the specific "absorption ceiling" introduced by the 1999 Berlin Council, limiting Structural Policy benefits to any country from the EU budget to a maximum of four per cent of its GDP'

<sup>548</sup> Interviews with Commission Officials: DG REGIO

fied. The DGs were gradually being mainstreamed, the enlargement brought on and forced a reassessment of their policies and the process of making them and so also changes in their administrative cultures all of which are becoming more Anglo-Saxon in orientation and language. The policies that the staff in the DGs wanted to have and believed in have all come under serious attack and still are. There is a sense of the CP, as desired by the staff in the DG, hanging on by the skin of its teeth; several of the officials interviewed were decidedly pessimistic about the future of the policy in its current form.<sup>549</sup> So far, at the European Council in 2005 the DG appeared to have retained the 'essentials' of the proposed regulation, although specifics are hard to come by, but the resources of the budget were not the 1.24 % GNP that the Commission wanted or the grander numbers of 1.4 and above desired by some of the recipients but rather 1.06%, down from 1.27% in 1999. This means a fall of 8% for the CP,<sup>550</sup> modest in a sense, but given that the DG and Commission had wanted a lot more it is a defeat. Far from there being any increase as had been expected, there was a decrease. The Delors glory days of independent policy making and DG autonomy and CP growth seem to be over. For all the seeming resistance of officials and Policy Networks to the changes that were so entwined with the enlargement they are happening. The 'disaster' of inter service communication and coordination which resulted from extremely individual DGs and seemingly Policy Network driven agendas following their own logic and desires at the expense of coherence and consistency resulted from the post Delors administrative culture and structures. This seemed to be a few signs that the DGs are gradually being limited. The DGs were being made more like bureaucratic ministries with their time for policy making seriously reduced as opposed to that spent coordinating and communicating with other DGs and institutions and civic society and carrying out bureaucratic procedures. Management were becoming just that and their staff were heading in the direction of civil servants and the MSs seemed to be the real winners in the enlargement game.

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<sup>549</sup> Interviews with Commission Officials: DG REGIO

<sup>550</sup> See note 282 Huebner (2005)



**Dates of Interviews Held with DG REGIO Officials**

Interviews carried out with officials between 31.03.04  
and 12.04.2005

**Dates of Interviews Held with NMS Officials**

Hungarian Official 1. 01.03.2005

Hungarian Official 2. 15.02.05

Czech Republic Official 1. 01.04.05,

Czech Republic Official 2. 25.02.05

Polish Official 17.03.05,

Estonian Official 04.03.05

## 9. CONCLUSION

### SUMMARY OF THE THEORY AND CASE STUDY FACTS

So we come now to the conclusion. But before we begin it is as well to remind ourselves about the main steps that have been taken so far. First we will review the theoretical approach once more before summarising the main findings from the case studies. That done we consider the broad trends of fragmentation in first the EU, and then the Commission, we move on to consideration of the less macro trends at work in the Commission of internal Policy Network activity and subsequent bureaucratization and their implications. One main implication was for the enlargement which is then discussed at length. Finally we turn to a more theoretical stance to draw together the theoretical 'corset' about our facts and trends. Everything discussed so far would suggest that a degree of organisational pathology is at work so we return to Mintzberg and Hofstede who are used to analyse the Commission. From a longer perspective we bring in again the Papal model which will enable us to state the dangers ahead. Then to round off we will look at a possible solution to remedy the shortcomings of the EU as it stands.

### 9.1 SUMMARY OF THE THEORY

In the first chapter we considered the broad sweep of European Integration History and identified a rather particular dialectic process underway, namely an organic biological evolution at the heart of Europe. Several aspects of the High Authority - Commission could be considered to be benevolently pathological from a democratic and a theoretical perspective. The benevolent quality of the process implies that some sort of vaccination was at work and required very good reasons. Closer inspection revealed a dual vaccination taking place with the main parts of the new 'polity' host being prevented from making war and being lured to create prosperity instead. A range of European-level institutions sprang up to contain the democratic organisation operating in its midst. This combination of institutions created a European layer of governance that has secured the immunisation of the MSs and their development further still.

The Commission, as the vaccine, has its own organisational structure and logic which is argued is both highly original, 'pathological' and potentially unstable. It contains the potential to be a government of Europe and uses Policy Networks to bind the national civil service to itself. This perspective is of some help when considering the 'pathological' range of Mintzberg organisational types which are found in the Commission. It is rigidly bureaucratic in appearance but there was something superficial about this. It seems to be more bureaucracy in appearance than an attempt to make a true bureaucracy. At the same time it is very mission-like and able to be flexible and full of entrepreneurial talent but more on Mintzberg in the next chapter. It is an organisation that is looking to expand, indeed made to grow. The organisational logic of the Commission drives it to be the main governmental structure in a united Europe. It seems likely that this was always intended however vaguely by the founders.

The steps by which the Commission expands its scope and competences is by fragmentation and engrenage. It essentially divides the opposition whether in the Council or in the Member States.



istries and then binds the officials who have been lured towards the possibilities for themselves and their positions to the European project. Ministries will always have a centrifugal tendency to follow their own sectoral agenda rather than that of the centre and are also easily lured towards the European possibilities for furthering their sectors. As long as the Commission remains dynamic and mission oriented it can bind its multinational staff and multi sector DGs more or less together. However, when it has been over dynamic and so potentially pathological (from an MS perspective) then the MSs who make up the host 'polity' can and will arrest the Commission much as an immune system can. This is done by removing the dynamic head of the organisation and making it clear that less legislation and dynamism are wanted and possible. The second stage is to dissolve the Commission internally back into a collection of national staffs. MSs apply greater pressure on their nationals and appoint them deeper into the organisation. Without a sense of mission and dynamism to bind the loyalty of such a diverse collection of nationalities the Commission itself begins to give way to centrifugal sectoral pressures. Often these are closely linked to national loyalties. Fragmentation of the Commission proceeds apace and a formal decentralisation is put into force to try and set limits to the disintegration. Large scale bureaucratization is introduced to try and allow the College to control the staff of the DGs more and to re-integrate the DGs. Reforms will be resisted in particular by the DG hierarchies and sectoral Policy Networks which have seen their influence grow in the absence of a strong centre.

Finally the period of Commission slow down will come to an end. The EU was created to be Commission driven to a specific goal with ever continuing integration. The period of slow-down succeeds in restoring a sense of security and control to the MSs and their domestic audiences. The Commission will then gradually begin to prepare itself to relaunch the project and prepares for more spillover possibilities. The history of the EU shows that this process runs in cycles and it is argued will continue until a final traditional democratic governmental structure is found for the Commission to be a part of. Currently the case studies have made quite clear we find the Commission working its way out of a slow-down phase and struggling to re launch the project.

We would expect to find the EU and the Commission in quite a serious state of fragmentation. The two opponents the MSs and the Commission having achieved a stalemate as it were. Instead of reform and rationalisation we would expect to see a lack of compromise and a willingness to create new procedures and empower new governance actors rather than grant new competences to the opponent. The MSs are not in a position to really provide a sense of mission and leadership to the EU and the sectors which have been fragmented from the total control of their governmental remit. The Commission is, but not when it has been deliberately weakened. Without the dynamic of expansion and spillover potential the Commission itself would be in danger of fragmenting as sector loyalty proves greater than organisational loyalty for an organisation that has lost its sense of mission.

We saw the need to find some historical model to assist the analysis and that classic state formation theory is unfortunately not ideal for this task. The medieval papacy was found to have been useful in this regard and certainly the many parallels which exist between the EU and the papacy make it a worthwhile object of investigation. The result of the use of the papacy model was that both the papacy and the EU can be said to have developed in a similar organic manner. The implications of similarity in organisation and development are that we can look to the later papacy to locate problems which may well affect the EU unless it is very careful.

So we have reflected once more on the theoretical approach to the thesis. We will now run through the main facts that were found in the case studies.

## **9.2 SUMMARY OF THE CASE STUDY FACTS**

### **9.2.1 ANTI FRAUD AGENCY (OLAF)**

The case of OLAF usefully illustrated the relationship of the Commission to a specific reform and so to reform in general. Much like the EU and the problems of fragmentation, discussed next, generally OLAF can be seen very much in the light of the creation of another actor in the EU system, or rather the re-invention and strengthening of an old one, to solve a problem which could maybe have been better solved by a more rational organisation. Like the Commission it had a combination of tasks presented to it to perform which do not seem very consistent or complementary. This despite the fact that it had rather scarce resources for its first period of existence and the Commission was not free from blame in this regard. It seems to have been used as a political pawn in the larger EU game, with the Commission and the EP vying for power. The essence of the agency was and is investigatory in an administrative manner whilst doing a task which really requires police power.

The first stage in the reform which resulted in the creation of UCLAF was put onto the agenda by the EP but subsequently the responsibility of the Commission. UCLAF was ultimately a reform which failed largely due to Commission unwillingness to fully accept the logic and implications of its existence and function. There was a very real sense of half heartedness about UCLAF and the manner in which the Commission dealt with it. Maybe reluctance would be nearer the mark, quite possibly because UCLAF was perceived as unnecessary and foisted on the Commission by the EP more as a control mechanism than anything else. Importantly, the Commission was able to continue for over ten years with UCLAF in this state. OLAF was seemingly forced onto the Commission after the Santer College fell; once again the EP instigated this, required independence for the agency and also pressed for new staff untainted by the problems with UCLAF to be recruited. OLAF's actual structure, competences and position in the Commission itself was also the result of EP, Commission negotiations. The Commission at first seemed in favour, so long as the pressure was on and the memory of the scandal fresh, but then the mid term report apparently shows inexorable pressure being turned on OLAF to blunt the reform. The staff required for the agency to function were not initially at least fully made available by the Commission despite the availability of funding by the EP. Instead of the agency investigating the allegations of mismanagement from within the Commission, the latter wanted the agency to concentrate on investigating VAT fraud on cigarettes etc, basic police and Customs and Excise work, labour intensive and not a rational use of scarce expert resources. This is particularly the case when it is remembered that OLAF alone has the right to initially carry out investigations in the European institutions. To finish off on the Commission's attitude to reform, one could sum it up as apparent welcoming acceptance then growing reluctance is shown followed by steady attempts by various sources in its ranks to quietly undermine and where possible render reform harmless.

It seems ironic that the Commission employed very similar tactics when reining in OLAF to those that the MSs have traditionally used to curb its activities in terms of restrictions of staff numbers and increases in tasks. Staff numbers and resources were kept limited and hard fought over. At the same time a large, almost incredibly large array of tasks thrust onto the organisation. From fraud proofing legislation to raiding industrial and EU premises; from internal management tasks like investigating mismanagement and making recommendations for



improvements to carrying out internal investigations into staff and management. Like the Commission, OLAF enjoys some independence in actual activities, in particular the Director has a legally guaranteed independence, whilst its resources are decided on by the very people it is supposed to be guiding and investigating.

Policy making and neo functional spillover is what the Commission is about, in its own eyes at least, and many of its staff and certainly the hierarchy, assess success in terms of policy making. OLAF was no exception to the rule and sure enough the simple existence of OLAF, in however an emaciated form, was stated to require proper legal controls over it, formal legal status and, of course, new European level legal competences in the form of EUROJUST and a European Prosecutor. Rather than the agency, which only gradually acquired its three hundred odd staff, concentrating on leading a radical overhaul of the EU institutional structures and the Commission in particular and making the organisations as absolutely fraud and mismanagement proof as possible, the new spillover plan was immediately set into motion and chased. In essence what at first appeared to be an organisation that would reinforce the bureaucratic identity of the Commission by insisting on standardisation of management practices and reinforcing the management's control over the staff via disciplinary proceedings, is in fact very quickly turned to the use of the Commission's plan to begin to expand again. OLAF was to be used by the Commission to control the MSs rather than investigating Commission internal difficulties.

UCLAF to a minor extent but mostly OLAF were required, by the EP at least, to perform managerial-investigatory tasks into the Commission, tasks which required enough formal independence to be credible. Implicit to this was that the Commission and its management by themselves, were not capable of enough objectivity to investigate and discipline their staff. A situation which would in most companies send shareholders racing to protest and demand radical changes. Only radical changes do not happen in the Commission and the EU, and this is not just the fault of the Commission. MSs have stalwartly resisted changes to the Commission's organisation which in anyway threatened their influence and ability to place nationals in relevant positions. The result is that instead of the radical restructuring of the Commission (and the EU) and radical re thinking of its function and reason for existence that were and are necessary, a fudged bureaucratic compromise is and was the result. Another partially empowered organisational actor was created with all the complications that that generates, to perform a task which could more simply have been performed by a reformed Commission in a reformed EU. It is true that the Commission in its mid term report does call for the tasks to be unravelled to a degree and suggests that some internal matters be performed by itself again, but that would only work in a very different Commission to that which wrote the report. Maybe it could be suggested that such a Commission would not have made such a recommendation; probably it would not need to as such changes would have been effected long before anyway.

The relationship between OLAF and the other DGs and in particular the staff is interesting. Given that one of the operational remits of OLAF is to allow officials whistle blowing possibilities and this is combined with a general right of the agency to consider mismanagement, this cocktail of possible competencies could be powerful indeed. Now that other reforms have come on line, the financial reforms in particular, the staff especially at the Head of Unit level seem to be quite aware if not worried about the possibilities. One such staff member talked about having the possibility of an OLAF case against you, was an additional uncertainty and worry for his rank. This worry was combined with a feeling that the agency would home in on the lower managerial ranks and that the upper ones would drop the lower ones in it, as it we-

re.<sup>1</sup> Since individuals under investigation will often do deals and reveal other people involved in the case in question, there could well be effects on policy networks let alone networks within the DGs themselves.

The relationship of OLAF to the enlargement was complex. Firstly it was one of the reforms intended to make the Commission ready for the expansion east. Secondly OLAF showed the tendency of the Commission, and EU in general, to require things from the NMSs which would not have been necessary had the Commission been in better shape itself. Institutional weakness in Brussels raised higher requirements for institutional strength in the NMSs than should have been the case. OLAF, like in other policy fields the relevant DGs, revealed the Commission effectively examining and assessing NMS readiness for enlargement from a rather dubious position itself. The final political decision to enlarge the Union can be suspected to have led to the glossing over of details like corruption and fraud in the NMSs. Given the continuing weakness in Brussels with regards to protecting EU finances this may well mean their greater vulnerability in the future as enlargements continue.

### 9.2.2 EUROPEAN ENVIRONMENTAL AGENCY (EEA)

The case study of the EEA was the only one to be performed on an organisation not directly controlled by the Commission. In this sense it also served the function that discussions with NMS officials had, in providing external feedback on the performance of the Commission departments concerned. The EEA was an interesting case as it revealed some trends in the EU and also showed once again the Commission's apparent resistance to reform and any organisation that is in a position to inspect it and its performance. OLAF was also resisted for similar reasons. The Commission is alleged to react rather allergically to European agencies regardless of their usefulness,<sup>2</sup> understandable granted that the MSs do indeed seem to perceive the EEA at least as a useful institutional counter to the Commission.

On a more fundamental level the combination of a sector interests with MS actors, as happened in the EEA,<sup>3</sup> and also happened in the ECSC with the steel cartels and MSs working together to effectively restrict the Higher Authority, could be the nemesis of the Commission. It is likely it senses this, this theme is discussed more fully under the heading networks.<sup>4</sup> The EEA, in a similar manner to UCLAF/OLAF, was also created originally to plug a gap in the policy making arena, namely that of policy evaluation and feedback. The EEA reflects what would appear to be a concerted attempt by the MSs to reassert control over the environmental field.

It is interesting that the EEA evolved to have a heavy emphasis on 'Programming and evaluation', particularly of the output of DG ENV. To some extent any organisation in the Commission or EU which declares its intentions to be those of improving efficiency and effectiveness and stress programming and evaluation, can be suspected of political as well as neutral administrative concerns. This issue is discussed later under Policy Networks. In a system and organisation as political as the EU and the Commission it is hard for them to be anything else. The fact that the MSs have '... succeeded in packing the influential management board of the organisation (EEA) with their own representatives, thus further ensuring not only that the

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<sup>1</sup> Interviews with Commission Officials: DG REGIO

<sup>2</sup> Kassim, H and Menon, A. *EU Member States and the Prodi Commission* in Dimitrakopoulos, D. (ed) *The changing European Commission* p.37. (2004) Manchester, Manchester University Press. p.97

<sup>3</sup> *ibid* p.97

<sup>4</sup> Spence, D. *Staff and Personnel policy in the Commission* in Edwards G (ed) *The European Commission*, (1997) Cartermill, London p.89. 'The increasing number of European Agencies created to take on tasks arguably the legitimate province of the Commission is seen as a further illustration of the endeavour to weaken the esprit de corps of the statutory staff...'



Commission's prerogatives in this crucial policy area were challenged but that their own were not,<sup>5</sup> suggests that they have every intention of reining in the extremely productive Commission where the environmental field was concerned. If for no other reason than that they had come to realise just how expensive environmental legislation could be and as economic interests reasserted themselves.<sup>6</sup>

The EEA seems to be a symptom of the general sectoralisation<sup>7</sup> of the EU policy fields, much like the other agencies and so related networks. The danger is that these represent an acceleration in the centrifugal tendencies already apparent in the EU, with more power going to sectors and MS-Commission rivalry resulting in yet more actors with diluted compromise competences which are not effectively coordinated by any central authority. A more sensible approach might as usual be for the functions of the EEA to be incorporated into the Commission or rather a new governmental structure which will be outlined in the recommendations section. Part of the problem is the ongoing unwillingness of the MSs to provide the necessary resources to the Commission to manage the policies it has been given properly.

Without wanting to deny that the MSs may well desire to turn the EEA into a 'tool' and are using the EEA,<sup>8</sup> there is also the basic organisational rivalry and apparent resistance to reform of the Commission to be taken into consideration. As with OLAF the Commission seems to see the EEA as a rival, and competitor where they should be complimentary; 'This attitude is partly explicable in terms of a desire not to delegate real authority to a potential competitor.'<sup>9</sup> The EEA offers the Commission the necessary policy evaluation required for improved future policy making and programming and this should be complementary to DG ENV's activities. The Commission proposes legislation and so retains real legal authority which the EEA simply does not have and yet it resists the agency. The Commission controls EEA funding to some extent and seems to be willing to use this mechanism if needed. It has also applied the same method used with OLAF of wanting the EEA to concentrate on external data collection and the generation of general reports on the state of the environment and others for the benefit of the DG, rather than concentrating on the evaluation of DG policy. This is in line with the general Commission desire to down-grade agencies where it will '... criticise their functioning and propound a highly restrictive view of where and how they should be deployed. Indeed, Commission officials have in practice attempted to restrict the effective authority of agencies. . . .'<sup>10</sup> Granted that some environmental legislation could well have been improved on, according to some DG ENV officials themselves, the agency should be welcomed for this reason alone. Some have even stated that the EEA and agencies are '... a step in the direction of more effective "administrative integration"'<sup>11</sup> or 'a sensible outsourcing of specialised knowledge so the Commission can concentrate on its core tasks.'<sup>12</sup> Whilst the political motive cannot be denied, these authors' views are also accurate. Which leaves the observer with the feeling that the Commission, here DG ENV, is possibly jealous about its mo-

<sup>5</sup> See note 2 Kassim; Menon (2004) p.97

<sup>6</sup> Mazey, S and Richardson, J. *The Commission and the Lobby* in Edwards G (ed) *The European Commission*, (1997) Croom Helm, London p.184. '... officials have over the years gradually acquired for themselves a de facto policy role often supported by attendant interest groups and so called "epistemic communities" of experts (Haas 1992). Thus, a considerable corpus of environmental law was developed without a strong Treaty base and finally legitimised in the SEA in 1986... Only now, perhaps, do Member states realise the huge implementation costs of such environmental policies... National governments (including Britain which now leads the opposition to these laws) went along with it, largely in ignorance of implementation problems ahead.'

<sup>7</sup> Metcalfe, L. *Reforming the Commission*, Journal of Common Market Studies Dec 2000, vol.38.No.5. p.823, 833, 834, 835.

<sup>8</sup> See note 2 Kassim; Menon (2004) p.97

<sup>9</sup> *ibid* p.97

<sup>10</sup> *ibid* p.97

<sup>11</sup> *ibid* Kreher (1997) quoted p.97

<sup>12</sup> *ibid* Christiansen (2001b) referred to p.97

nopoly over all aspects of policy making and reluctant to accept any reform of the policy making process and so indirectly of itself.

With regards to the enlargement, there seems to have been a measure of rivalry here too. The DG seems to have wanted to curb the EEA from enlarging first and so beating the Commission to it. There seems to have been little policy reason for this but just another sign of the organisations unhealthy rivalry. The EEA was quite critical about the DG and its enlargement activities and stressed the habit of the Commission failing to coordinate itself internally and as a result requiring that the limited resources of the NMSs be used to construct networks which were duplicating each other. This was particularly bad where different sectors were involved and the DGs did not coordinate or check first, whether or not, a network was already in existence before simply requiring another to be made. Duplication between the DG and EEA is also a danger if for no other reason than that the DG had seemed to lack a degree of coherence. The competition between the two organisations, as also plagues the whole of the EU, is counter productive and leads to confusion and duplication rather than positive synergies; thankfully there are signs that this is gradually moderating.

A particularly interesting finding was the changing relationship of the EEA and DG ENV. Whilst the DG was more environmentally active and in a state of internal conflict, the conflict with the EEA was at its worst. As the DG was re-oriented via personnel reorganisations at various levels and economic interests allegedly came to be more influential in it, so the conflicts with the EEA subsided. In fact the interviews even seemed to show a quite cordial atmosphere existing between the senior management of both. There would appear to have been a take over of the environmental field, to some extent, by MSs and these in part for economic reasons. In that sense a larger MS strategy seems to have been followed of which the EEA was just a single element, a useful means of applying influence whilst the DG was re-oriented internally.

The EEA as an organisation seems to be remarkably like the Commission itself, or rather an interesting mixture of the Commission during its earlier phases, dynamic and acting like partisans almost, and also the more problematic Commission of the present day with resistance to reorganisation and a lack of coordination. This young organisation was not surprisingly quite critical about the old fashioned, slow, bureaucratic DG and Commission. In this sense it seemed at times to almost present an alternative sectoral approach to managing the policy field, far more modern and less formal, with a more partnership approach to the MSs than the DG. Whether this merely reflects greater sectoral self confidence and willingness to go it alone and to drop the old rivalries of the EU, or rather a desire to see the Commission restructured and rejuvenated remains to be seen. On balance the latter seems somewhat more the case than the former.

### 9.2.3 DG ENVIRONMENT (DG ENV)

The findings for DG ENV are several. It has been extremely successful at developing a sectoral area and associated legislation for which there was little real treaty base.<sup>13</sup> The structure of the DG and the departments in it were considered, in particular the recent bureaucratic rigidity which had followed after high levels of discretion being available for officials. The decentralised state of the DG and the apparently weak management had provided great scope for regulatory entrepreneurs. Their presence in the DG in the past was established by the research and their ability to spot and use windows of opportunity to promote legislation. Indeed the sheer amount of environmental legislation would be hard to explain if it was not for the highly

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<sup>13</sup> Edwards, G and Spence, D. *The Commission in Perspective* in Edwards G (ed) *The European Commission*, (1997) Cartermill, London p. 19



motivated activity of the officials that populate the DG and an extremely effective external network.<sup>14</sup> The DG was shown to be similar to the rest of the Commission in the sense of attracting highly talented individuals whose careers were and are very much in their own hands. The existence of networks of possible principals for the officials to locate and seek the assistance of, was laid out in the chapter about the DG and the fact that this allowed and enabled officials to circumvent problematic parts of the Policy Network, which can be the hierarchy since they are but one element of it.<sup>15</sup>

The method of adjusting policy within the DG by personnel reorganizations was outlined. The existence of departments, and units within them, with quite a large degree of independence, discretion and power made such reorganizations seemingly the most effective method of effecting policy changes. The emphasis on individual officials and the need to move them about and so to exert control over the DG showed the existence and strength of networks in the DG. Equally the literature on the DG and the findings, revealed that one important network and group of officials being moved about were ironically those who held to the old culture, and ideology of the DG. They adhered closely to the most idealistic forms of Europeanism and environmentalism. But the MSs were allegedly willing to exert pressure to control the DG and it was also no longer in tune with the more economically oriented Commission and EU. One official thought that maybe an interesting draught game style of management had come into play.<sup>16</sup> Over productive officials were allegedly capped, and prevented from generating legislation by placing a DG senior manager, a cabinet member as well as the Commissioner, all of whom shared the same nationality, above the officials concerned in the hierarchy to prevent any possible outmanoeuvring within the DG at least. This illustrates the Policy Network potential within the DG which results in such methods allegedly being used. There was to some extent a noticeable difference between some of the officials of specific nationalities in the DG. Those from the UK followed a less legalistic approach and preferred to use non legal methods and voluntary agreements with industry as opposed to those from Germany and Italy in particular who were more legally oriented. The emphasis is on some, as there were German officials who favoured the less legalistic method and British ones who were in favour of it.

The paradoxical stance of the DG on implementation and infringement cases was stated. That despite large numbers of infringements the DG was not increasing the staff members involved in the DG's legal service department and there was discussion about reconsidering the MSs' control over the infringements. The likelihood was that this was done to reduce the friction that the Commission had with the MSs, particularly as over half the infringement cases before the ECJ were of environmental origin. At times though, the lack of implementation seemed to have been because of problems with the legislation which should have been changed or dropped before being adopted. There has to be a question mark at least over the intentions of the DG and or the Commission as a whole in the infringement issue, given that some of the more environmentally friendly legislation was the result of the highly productive officials in the DG and no doubt their network outside it, and that there were those in the DG that seemed to have

<sup>14</sup> See note 6 Mazey; Richardson (1997) p.184. '...officials have over the years gradually acquired for themselves a de facto policy role often supported by attendant interest groups and so called "epistemic communities" of experts (Haas 1992). Thus, a considerable corpus of environmental law was developed without a strong Treaty base and finally legitimised in the SEA in 1986...An effective advocacy coalition of Commission officials, the international scientific community, and a vociferous and skilful environmental movement acting as a "megaphone for science" made the running.'

<sup>15</sup> Page. E. *The People who run Europe*. (1997) Oxford, Oxford University Press p.140. 'As officials appointed and promoted (at least below the A3 level and to some extent above) on merit and length of service criteria, they belong to a hierarchically structured organization...and operate in a bureaucratic arena. On the other hand EU civil servants belong to an organization whose multinational character can shape internal organisation, careers, and relations with outside groups and with political masters. Its direct political master the Commission, does not have control over the legislative process. As a consequence, we know that officials are involved in seeking to mobilize support among other EU institutions and member states...'

<sup>16</sup> Interviews with Commission Officials: DG ENV

done what they could to stop some of the legislation being adopted. In particular the UK was alleged to be at the core of the attempts to blunten the environmental legislation.<sup>17</sup> The suspicion must be that maybe it was convenient all round for some in the DG, and some of the MSs if the infringements were quietly allowed to slip. Furthermore new methods apart from legislation are being considered which would then avoid infringement proceedings. These are known as 'strategies' which are harder to control infringements of than policies/legislation.<sup>18</sup>

Assessing whether or not a DG gained or lost from the enlargement and the changes around this period is particularly difficult with DG ENV. On the one hand it gained more units and staff, but this seems to have come at a cost to its policy purity and sense of direction. The morale amongst some elements of the DG was low and its staff turnover was rather high. The DG has become more centralised, in particular due to the wave of bureaucratization which was discussed in the chapter, and certainly controlled its officials more closely, but at the same time the issuing of legislation has decreased and its profile has become blurred. It is closer in line to the economic growth emphasis of the current Commission and its old adversary DG ENT as a result. The mirroring unit in the latter, whose task was to keep DG ENV under scrutiny, decreased the staff members in it considerably as, presumably, it no longer required to keep a constant watch for the emergence of possibly industry unfriendly legislation from the old rival.

The effect on the enlargement was also considered. NMS officials were on the whole positive about the work of the officials in the DG. It should be stated that the intensive work that was carried out between the DG and the NMSs was after the more dramatic of the reorganisations had taken place. There was a sense that the NMSs would be less in favour of stringent and expensive environmental legislation, but whilst this had to be the case neither the DG officials nor the NMSs expressed many worries about this. Possibly since the NMS officials came from the less venerable environmental ministries which saw in the DG a helpful fulcrum when raising their own domestic profile. Infringements are high but in DG ENV the staff involved are not increasing and tolerance and restraint is being shown to NMSs and other methods are being considered to replace legislation.

#### 9.2.4 DG AGRICULTURE (DG AGRI)

The findings relating to DG AGRI are now presented. The first point is that the growing power and willingness of the MSs to interfere in a DG seems to be most clearly shown in DG AGRI. There are examples of MSs pressing their nationals into positions as low as Head of Unit level and MS officials showing some MS loyalty in their decisions. According to the literature, there is a process of re-nationalisation going on in the policy and there are some who would like to see this continue. Unsurprisingly many within the DG have resisted this tendency and the reforming of the policy or the DG. The French are stated to be one MS which is strongly present in the DG and very resistant to any changes. The influence of the MSs in the DG after the Delors period was considerable and this was shown clearly. The growing bureaucratization was also outlined in the chapter, serving as it did the multi purposes of changing the image of the DG and Commission from dynamic political actor to slow, safe bureaucracy and reducing the power of Policy networks and MSs. Also the case chapter demonstrated that the outsiders, the NMSs, lost out as a result. The complex bureaucratic requirements resulting in minimal payments to them in the period stated, and excessive requirements made of them perhaps to make up for DG weakness.

<sup>17</sup> See note 6 Mazey, Richardson (1997) p 184. 'Only now, perhaps, do Member states realise the huge implementation costs of such environmental policies. National governments (including Britain which now leads the opposition to these laws) went along with it, largely in ignorance of implementation problems ahead.'

<sup>18</sup> Interviews with NMS Commission Officials DG ENV



The CAP is stated to be well known for its complexity; 'The "Byzantine complexity" of the CAP is legendary.'<sup>19</sup>This is a situation which has given large amounts of discretion to the specialists and also reinforces the general notion that complexity leads to opacity which keeps all but the experts on the outside.<sup>20</sup>There are said to be 'Intimate, even incestuous, relationships between national agricultural ministers, and farmers' groups have manifested themselves in quite insular and integrated national policy networks.'<sup>21</sup>The reforms that have been agreed upon seem to have made the CAP even less understandable to all but the experts. The complexity is said to have assisted in the formation of 'tightly integrated farm policy communities' and their making sure that they 'keep a grip on decision making.'<sup>22</sup>The 'highly fragmented decision making mechanisms at the sub systematic level' are stated to be a major hindrance to reform and 'sweeping policy changes.'<sup>23</sup>The literature and the reactions of CAP officials seem to confirm the presence of 'policy networks' and it seems clear that the Commission is the "ring leader" of CAP networks, and its officials remain that too.<sup>24</sup>It is interesting to note that 'The CAP's complexity is almost impossible to overstate, and in many respects is an anathema to coherence or centralisation.' Excessive complexity encourages and covers for a range of problematic if not unsavoury activities of which fraud is the most common.<sup>25</sup>This is not so dissimilar to the situation in the rest of the EU. The CAP's complexity has: kept officials enjoying considerable power, reform and reorganisation at bay, farmers reasonably safe and content, agricultural ministers content and the sector both inefficient and absorbing too many funds. EU complexity has likewise probably been extremely useful to a similar range of actors as well.

The DG is stated to have been traditionally run following a French and now Mediterranean management style. At times this means it has been seen to be extremely bureaucratic and hierarchical but somehow able to make quick decisions when required with 'élan and efficiency.'<sup>26</sup>Criticism was laid at the management's door by the Court of Auditors who were critical of the management and in particular the quality of its proposals. They also stated that there was inadequate documentation of the facts behind reports issued by the DG. Unfortunately the national split in the DG is alleged to run quite deeply through the management. Whilst the management have been very Southern European in outlook, the Commissioner was, until recently, Austrian and in favour of reform. There are said to be other large groupings, the largest are the Scandinavian and British officials who press for reorganization and reform and have problems with the management style in force. There are the European idealists of all nationalities and now a growing number of reformers and auditors. This last group has seen large increases in their numbers and are said to 'have an armlock' on the DG.<sup>27</sup>The DG was described as being a tense place in part due to the different national management views. The management of the DG was stated to be not able to cope with the many tasks they are called on to perform: the enlargement, the CAP reforms, the Kinnock reforms and financial reforms in general, the reorganisation. An atmosphere increasingly lacking in trust was alleged to have ruled between the Commissioner, Cabinet and the DG. The Director General in 2004 was alleged to have problems communicating with the Commissioner and this has only added to the general tension. There was said to be a lack of trust in the DG which resulted in the insistence by the hierarchy of bureaucratic procedures in relation to communica-

<sup>19</sup> Peterson, J and Bomberg, E. (1999), *Decision making in the European Union*, New York, St, Martin's Press p.138

<sup>20</sup> *ibid* p.138

<sup>21</sup> *ibid* p.139

<sup>22</sup> *ibid* p.139

<sup>23</sup> *ibid* p.139

<sup>24</sup> *ibid* p.139-140

<sup>25</sup> *ibid* p.144

<sup>26</sup> Interviews with DG AGRI Officials

<sup>27</sup> Interviews with Commission Officials: DG REGIO

tion being strictly adhered to. Officials were forbidden on a monthly basis from making or accepting any contact to the cabinet or Commissioner.

As with DG ENV there has been a twenty five percent staff turnover per year recently, which seems all too common in demoralised DGs. According to some officials the DG is over staffed and badly so, according to the personnel department it is understaffed. Thirty percent are said to be surplus and do little, thirty percent are demoralised and therefore work less hard than they could whilst thirty percent are highly motivated and work extremely hard. There is little staff transfer between departments with staff hoarding<sup>28</sup> being carried out by Heads of Unit and these staff then create unnecessary work to justify their positions in the Units. There was said to be conflict and general tension owing to the increased workload and problematic staffing policies. Staffing levels appeared to be utterly resilient to changes in work load and regime make up. The decline of the DG and the CAP should be leading to a gradual decline in staff numbers but this is not the case, rather staff numbers are increasing. Part of the explanation was the need to implement new and old policies at the same time and the growing complexity wrought by the reforms, but the officials were sceptical that there would ever be a decline in staff numbers.

In organizational terms the DG has witnessed more power going to horizontal units and directorates. From eleven directorates three are now directly dealing with coordinating tasks rather than sectoral contact. Most new staff are immediately attached to the horizontals. A major reorganization was planned for October 2004, the main features of which were that the units paying for the CAP were to be separated from those monitoring the market and setting the rates and placed in different directorates. The need to fully implement the Kinnock reforms and in particular the reforms associated with accountancy methods to protect against fraud led to the creation of a new directorate solely charged with this task. Most new staff were to be allocated to rural development and the audit directorate. Before, the units had financial control members of staff attached to them, but with their increasing importance so the directorate was created. The personnel department stressed that the reorganization was to rationalize the DG and to integrate the New Member States fully into the organization. Some officials stressed that the reorganization was intended to incorporate the changes required after the Mid-Term Review and the reforms of the CAP, i.e. a purely logical step. Others stated that the Court of Auditor's report recommended the changes be made. This is true but the same recommendations were made in 1990 and ignored. More staff stressed that the allegations of fraud and corruption in one of the market sectors in 2003 forced the DG to change. The balance seems to lie with the use of the reorganization as tool to achieve many goals the majority of which were to overcome the resistance to reform that had been successful before.

The DG was allegedly remarkably resilient to reform and reorganization. The Court of Auditors made a report in 1990<sup>29</sup> which called for some fundamental changes in the DG's methods of organisation. These recommendations were supported by the European Parliament and ignored by the DG as the report made in 2003 repeats several of them.<sup>30</sup> The attempts at reforming the administration of the Commission and the DG have also floundered on the issue of mobility and the ability of staff to resist being made mobile. There is a great unwillingness to take individual responsibility and the creation of OLAF, the anti fraud agency has only encouraged this phenomenon. No-one really trusted anyone in the DG and therefore they were unwilling to put their head on the line and prefer to pass the buck upwards. The Kinnock reforms were alleged to have been disliked and resisted by many in the management. The ABM

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<sup>28</sup> See note 4 Spence, (1997) p.108 quoting from the Economist (1990)

<sup>29</sup> Court of Auditors. Special report No 9/2003. 2003/C211/01

<sup>30</sup> *ibid*



(Activity Based Management) procedure had been quietly dropped after resistance. Whether the 2004 reorganisation would work or not was a moot point, some seemed to think that it was badly thought out, and seemed over rushed and this threw doubt on the probable long term success of it.

The DG was excellent ground for Policy Networks and not surprisingly there were plenty of indications that this was the case. On a purely organizational level first, staff stated the frequent uses made of networking and personal contacts when discussing project and task distribution, as opposed to objective criteria like merit or qualifications; this was stated to be endemic. People were alleged at times to have been given positions on the basis of who they knew. It seemed to be possible to affect officials' promotion prospects to a certain degree if they were willing to join various networks and to use the hierarchy to their advantage. Some 50-70% of the officials in the DG were alleged to be loyal to their sector and idealists in terms of promoting agriculture.

According to Commission sources there was alleged to have been resistance in the market units (CMO) to the reforms which would affect their sectors and of course their units. The nature of this resistance appears to have involved: utilizing networks, MS pressure, and the use of information in the DG. The failure of the DG to reorganize itself in the light of the CAP reforms apparently weakened the reforms themselves. The Sugar CMO and its personnel are cited as an example of longevity in post and an unchanged, unreformed policy being neatly correlated, with the result of initially successful reform resistance. When asked to consider the reform of their policy the officials of the Sugar Unit allegedly refused to give it their support and ensured that the study that was performed on the topic failed. Other reports issued by the DG appear at times to have been problematic if not misleading. Finally there was no other way forwards and the Commissioner allegedly intervened to force the reform; he appeared to have lost trust in the CMOs. He apparently used his power base, which was political, to oppose theirs which was technocratic and MS based. Implicitly the DG and the CMOs were seen up until this point to have successfully resisted necessary reforms which dragged the DG and the Commissioner into a bad light. The Commissioner allegedly made use of ever smaller groups to avoid the opposition to reform in the DG. He was apparently all too aware that the opposition was backed by some MSs and that he could be outmanoeuvred and out gunned by them. Thus the mid term review was planned secretly by a very few individuals and sprung on the MSs and DG, and so it was successful. Indeed the problems that the un-re-organized DG had had for the reform of the CAP itself were increasingly clear and it is probably for this reason that the 2004 reorganization was carried out.

For the enlargement process the DG was able to play an all too effective braking role. The close relationship at times between the process and the CAP was made clear; 'Eastern enlargement puts the CAP, as we know it, under threat as never before. Fischler insisted that his 1998 reform package provided a "much needed example to Eastern candidates for EU membership. The European model of agriculture no longer justifies artificially high prices."' <sup>31</sup> Some NMS officials, when asked, expressed their problems at dealing with the CMOs and this is backed up in the progress reports made by the Commission on them. Insiders alleged that some in the DG were not positive about the enlargement. The enlargement was stated to have been in some danger of failing or being postponed on the basis of agriculture alone. The CMOs were alleged to have done this by ensuring that the *acquis* was hard for the NMSs to accept and absorb, it was 'aimed against the NMSs in the period leading up to the Agenda 2000.' <sup>32</sup> The CMOs were stated to be an ongoing problem. <sup>33</sup> One official put the

<sup>31</sup> See note 19 Peterson; Bomberg (1999) p.143

<sup>32</sup> DG AGRI officials

current and old NMS problem succinctly enough; basically if you are not represented in a DG by your nationals then you will lose out directly in policy terms.<sup>34</sup> The NMSs are likely to have further problems down the line.

#### 9.2.5 DG REGIONAL AFFAIRS (DG REGIO)

The Cohesion Policy of the EU began its life more as a MS creature, but over time the Commission overtook the MSs and saw the possibility of promoting regions and developing loyalties between them and itself. The MSs have gradually clawed back control over the policy with the DG taking a more checking role than a decision making one. More recently, the policy has come under sustained attack from economic academics who stress its negative economic effects and challenge its positive role and assumptions. Some MSs who contribute funds to the policy consider it should be downsized or re-nationalized, and recent reports have stressed similar points. The Sapir report in particular made it clear that there were serious problems related to the policy.<sup>35</sup> One major problem is that inter-regional differences have grown within countries even as countries have converged. With the increasing emphasis within the Commission on competitiveness and economic issues, the policy has attempted to move in this direction too, and emphasized its economic growth promoting aspects and effects. This is disputed by several sources and it remains unclear as to the actual effect of the policy although it has probably done some good. The latest documents generated by the DG showed that it seemed to be taking a harder line on the policy with the MSs and at the same time defending it robustly and even beginning to push for a revival of it. There was a real sense that for all the rhetoric about solidarity as the foundation of the policy; it has served as a useful method of securing integration by allowing payoffs to MSs which might have seen fewer advantages in the liberalization of their economies than others. This notion of an MS getting its rightful payoff, or maybe pay back, from the EU as a sort of compensation is the root of the current problems for reform. The funds appear to have a more political effect than economic and have acted as a lubricant for the European project.<sup>36</sup>

Amongst the MSs there are very different attitudes to the policy depending on whether or not they receive funding or pay it. Oddly enough the unanimity procedure which applies to the policy was stated to have worked to the benefit of the DG as the Commission always had an ally, particularly amongst the smaller nations, and helped to prevent the re-nationalization of the funds.<sup>37</sup> The main institutions and actors involved in the cohesion policy: Member States, the Commission and the Council are divided internally as well as there being fluctuating relationships between them.<sup>38</sup>

The DG is broadly divided between: the sector directorates and their geographical desks which interact with the MSs and regions directly; the policy making directorate which decides overall strategy and the horizontal directorates which are more hierarchical and deal in particular with personnel matters and auditing. There have been considerable problems in the DG in terms of the communication and coordination of the various directorates with hurried attempts to strengthen the horizontal units in 2004-2005. There has been an increase in horizontals; the growth reflected the need to coordinate the DG better and the fact that during 'peri-

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<sup>33</sup> Interviews with DG AGRI officials

<sup>34</sup> *ibid*

<sup>35</sup> *An Agenda For A Growing Europe: Making the EU Economic System Deliver* the so called Sapir Report; Report for the President of the European Commission, (July, 2003), chairman Sapir, A. Group members; Aghion, P, Bertola, G, Hellwig, M, Pisani-Ferry, J, Rosati, D, Vinals, J, Wallace, H.

<sup>36</sup> See note 19 Peterson; Bomberg (1999) p.149

<sup>37</sup> *ibid* p.158

<sup>38</sup> *ibid* p. 163, 164, 165, 171



ods of reform the horizontal units have more power.<sup>39</sup> There has been a gradual increase over the last ten years in the number of horizontal working groups and in the various institutional aspects of horizontal origin. As with most of the DGs there is apparently the problem of staff not being transferred when required and reorganizations are carried out to achieve policy goals, to move staff most of whom enjoy 'feudal' rights to their position and to circumvent the Kinnock Reform goals of mobility. There is a pretty constant cycle between the sectoral directorates and the policy making directorate as to importance, this cycle is matched to the seven year round of budgetary negotiations. The sector directorates are stated to be more Germanic in mentality whilst the policy directorate is French- Mediterranean. There are stated to be plenty of problems between the two; the sectoral directorates having problems with the lack of understanding about the 'on the ground reality' which has been shown by the policy making directorate. This directorate was alleged to have managed to avoid the effects of the reorganizations and to have had the same management for many years. It was also alleged to be over fond of grand schemes and seemingly to be close to the French geographical unit. Geographical units seem to be routinely taken over by nationals of the MS they deal with, thus Poles deal with Poland.

The DG was alleged to 'lack a strong centre,'<sup>40</sup> and that 'its Directors are very autonomous'<sup>41</sup> which maybe accounts for the lack of coherence that at times seems to have existed within the DG itself. Even though the DG will be, in staff terms, the big DG winner, some DG management members said staff were insufficient.<sup>42</sup> Others stated that the DG was 'understaffed for what it wanted to do,'<sup>43</sup> as opposed to what it had to do. Regardless there evidently are problems with obtaining staff, and there are 'big delays in getting staff.'<sup>44</sup> The DG seemed to be trying to centralise itself,<sup>45</sup> no doubt to deal with its lack of a centre, and attempting to control Desk Officers more; 'There is an attempt at control of Desk Officers but it is difficult to find the right control, hard to find good managers.'<sup>46</sup> This attempt at control is shown in the standardising of Desk Officers with (task) list conformity reducing their freedom to choose and internal audits adding to this. Procedures were stated to be taking over everything.<sup>47</sup> Not unexpectedly there had been a dramatic increase in bureaucratic procedures which caused delays with 'more rules and procedures . . . less time to spend on developing quality.'<sup>48</sup> The geographical desks and in particular their Heads of Unit were said to suffer from the reforms; 'there are a lot of problems of bureaucratic procedures, and geographical desks can't develop newer roles they are so overloaded with cumbersome procedures.'<sup>49</sup>

The hierarchy of the DG has allegedly become more centralized in recent years. There seems to have been a lack of communication between low and middle and top management in the DG. Heads of Unit and Directors have allegedly changed from being top technocrats to being 'more political appointments over the 1990s.'<sup>50</sup> There was apparently a tendency for MSs to want to appoint politically favoured individuals to top positions in the DG whatever else the, 'hierarchy are more exposed to the political levels of the MSs.'<sup>51</sup> As in other DGs the Kinnock Reforms have been somewhat turned on their heads. The CDR still left the priority points in

<sup>39</sup> Interviews with Commission Officials: DG REGIO

<sup>40</sup> *ibid*

<sup>41</sup> *ibid*

<sup>42</sup> *ibid*

<sup>43</sup> *ibid*

<sup>44</sup> *ibid*

<sup>45</sup> *ibid*

<sup>46</sup> *ibid*

<sup>47</sup> *ibid*

<sup>48</sup> *ibid*

<sup>49</sup> *ibid*

<sup>50</sup> *ibid*

<sup>51</sup> *ibid*

the hands of the Director General who in practice therefore, decides who receives promotion whatever the intentions were that Heads of Unit would be empowered to do this. Some lower management were quite irritated by the manner in which they were expected to accept the reforms whilst they were being openly flouted further up in the Commission hierarchy; they alleged that the reforms would be passively resisted as merit was not rewarded.<sup>52</sup> The DG is said to 'be still Franco phone, Southern and speaking French. The majority of the over 40s speak French and under 40s English,'<sup>53</sup> however it has been stated to be facing the inevitable which means it 'will become more eastern and less southern.'<sup>54</sup>

As with all DGs there was stated to be a history of inter DG rivalry. This appeared to have taken many forms which at one point led to DG Enlargement and DG REGIO pressing different models onto the NMSs even in the absence of any objective criteria in the form of *acquis*. There were said to be struggles over cohesion policy between DGs described as a 'brutal battle' with the struggle between 'a deeply rooted conflict of ideas and ideologies.'<sup>55</sup> The majority of the NMS officials stressed that they had been given contradictory instructions to follow which had resulted in considerable amounts of wasted time and resources, the latter of which were and are in scarce supply in NMSs.<sup>56</sup> The DG seems to have taken a leading role in trying to work together with the other DGs and to draw them into the heart of its policy making, after all it had the funds to disburse and the others like DG ENT and DG ENV had the policies that needed the funds. The MSs were said to favour giving the funds directly to the DGs concerned.<sup>57</sup> When the Sapir report was released other DGs and their Commissioners were said to have tried to take over DG REGIO projects, not realizing that the MSs were the only ones who gained from them doing this.<sup>58</sup>

On the theme of networks in general and policy ones in particular, it seems highly likely that the DG had plenty of both.<sup>59</sup> Indeed there have been stated to be Policy Networks and that this is natural considering the large sums of money which inevitably encourage powerful constituencies to form and these Policy Networks will be in a position to affect the policies:

'A policy which consumes a third of the budget has invariably yielded powerful political constituencies. In many cases, the institutions setting policy, and the networks shaping it, will resist change . . . In short, radical change in cohesion policy may be inevitable, but it will not occur without a fight, and not just between Member States.'<sup>60</sup>

The DG seemed to have been flagged by Spain meaning that the Spanish held the Director General post for a long time. The majority of the top management were from the Mediterranean. The now ex Spanish Director General who had held his post for well over a decade appeared to protect the old MSs not from over suffering from the enlargement. The negative attitude of some in the DG to the enlargement and the emergence of some new rules which, like the 4 percent absorption rule seemed to have been targeted at the NMSs, seemed to indicate that a Policy Network of sorts was at work. Certainly Spain was quite effective at protecting its receipts<sup>61</sup> and perhaps protected the DG from radical overhaul. The NMS officials and

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<sup>52</sup> Interviews with Commission Officials: DG REGIO

<sup>53</sup> *ibid*

<sup>54</sup> *ibid*

<sup>55</sup> Hooghe L. *The Commission and Cohesion Policy* in Nugent, N (ed) *At the heart of the Union*, second edition, (2000) Basingstoke, Macmillan Press, 2000 p.97

<sup>56</sup> Interviews with NMS officials

<sup>57</sup> Interviews with Commission Officials: DG REGIO

<sup>58</sup> *ibid*

<sup>59</sup> See note 19 Peterson; Bomberg (1999) p. 157, 163, 164

<sup>60</sup> *ibid* p. 172

<sup>61</sup> *ibid* p. 154



some of the Commission ones seemed to suspect that the French, Mediterranean groups were most problematic, and particularly some in the policy directorate. Allegedly some in the policy directorate; ‘... don’t take into consideration what Desk Officers and the NMSs say, both are opposed by ... , n+2 for cohesion policy is impossible for NMSs.’<sup>62</sup>Certainly, regarding the policy as a whole, the Commission made new rules and standards for the NMSs to fulfill when rules were not formally present. The ‘thin’ *acquis* was bulked out to include items like administrative capacity which simply did not exist before and this was expanded beyond recognition. This all resulted in a negative conception of the process by NMSs, and a feeling that it was geared against them.

There is more to add on the enlargement. The Commission was not particularly efficient in disbursing pre accession funds only 50-70 percent of that available was paid out and this was subject to lengthy delays. Whilst the problems were on both sides, the Commission was criticized and recommended to improve its knowledge of the NMSs and also to increase staff numbers. Within the DG several directorates were stated to have remained apart from the enlargement even though this should not have been the case. Finally in the 2004 reorganization they were allegedly forced to change but it was too late according to some; ‘There is a natural resistance to change and we have suffered from it.’<sup>63</sup>The units dealing with the enlargement were isolated from the rest, and nationals from the NMSs were not encouraged to be in them, a mistake according to some.<sup>64</sup> Some of the policies the DG promoted seem to have had potentially negative consequences for the NMSs and possibly to have been intended to do just that. According to some figures NMSs would be receiving regional aid worth euro 137 per citizen, against an average of euro 231 for Spain, Portugal, Greece and Ireland. The DG was said to have been as a whole just adequately supportive of the enlargement<sup>65</sup> but ‘not enthusiastic’<sup>66</sup>, and ‘very inflexible.’<sup>67</sup>One respondent rated the DG as needing a lot of improvement on this point; Desk Officers and Heads of Unit were perceived to be either adequate or needing some improvement, the top management scored moderately better.

#### 9.2.6 DG ENTERPRISE AND INDUSTRY (DG ENT)

This policy field is said to be a classic example of the Commission proceeding by neo-functional stealth and building up momentum and pressing reluctant MSs towards granting it certain desired competences. The development was achieved by a Commission-led advocacy coalition, centred on a partnership between the Commission and big business, aimed at market liberalisation and competitive enhancement. The Single European Market initiative reflected a dirigiste-liberal line up. At times there are close connections between big business and the Commission and tendency for the Commission to allow the concentration on national champions to continue. There is an absence of a more holistic approach to industry as a whole including SMEs as well as major industry. This branch remains under represented despite large amounts of rhetoric to the contrary. It receives low levels of financial support and promotion; which some argue is inevitable given its vagueness and lack of group coherence and consistency. Some even argue that this is the best approach and that SMEs belong rightly within the national ambit. The balance of the evidence seems to weigh against this as many of the SMEs are quite large companies and the backbone of industrial nations like Germany. Whatever else the rhetoric of the Commission and its placing SMEs very high on the agenda sets a standard that it can be expected to be reaching. Unfortunately the proof lies on the side

<sup>62</sup> Interviews with NMS officials

<sup>63</sup> Interviews with Commission Officials: DG REGIO

<sup>64</sup> *ibid*

<sup>65</sup> Interviews with NMS officials.

<sup>66</sup> *ibid*

<sup>67</sup> *ibid*

of the Commission continuing to predominantly represent large industry, and to generate large amounts of legislation which takes into consideration the concerns of this branch of the economy but not the SMEs who are under represented in the DG and Commission. Some argue that if the SMEs were left in peace by the Commission this would be fine, but they are not, as industrial legislation affects them often more severely than larger companies; '... our main criticism is that legislation at European level is done for a minority of businesses' some of the laws agreed by the main institutions missed chances to back SMEs and even worse, took decisions against their interests.'<sup>68</sup>

In terms of EU research funding, the NMSs and SMEs have even seen their share drop lower still. Both are relative outsiders (newcomers) in the EU game and shared a similar fate. The SME initiatives that the Commission has supported like: the observatory of European SMEs; the Multi-annual Programme for enterprise and entrepreneurship and the SME envoy who was created in DG Enterprise, have all had a mixed record and do not appear to have helped the SMEs much. The creation of the envoy seemed to rather prove the lack of effect of the rest of the DG-Commission's SME policies. The envoy was to try and protect their needs in the DG. The subsequent creation of the DG inter-service 'SME Network' to perform similar tasks to the envoy seemed to prove the underlying inability of the DG and the Commission to do more to affect the problem than create more actors. Good for the officials, DG ENT was argued by some to be over staffed,<sup>69</sup> and the observatory was well met by officials but not external clientele seemingly; the 'foreseen impact of the activity of the Observatory is not evident.'<sup>70</sup> More recently the failure to achieve the Lisbon Criteria has helped to throw doubt on the Commission quite apart from the MSs. Both have responsibilities in the area and certain established interests seem maybe to have been successful at preventing both Lisbon and the proper working of the Common market itself. The re-emergence of MSs protecting national champions and the growing tendency to try and 'roll back the single market' is alarming.<sup>71</sup>

Part of the problem with the policy can be explained by considering the organization of the Commission and in particular the DG. The result of the break down in Commission coordination and cooperation has been 'In recent years legislative initiatives proposed by the Commission often lacked coherence to the point that some beneficial measures for SMEs were promptly choked-up by proposals from other Commission services, that added burdens for small enterprises,'<sup>72</sup> and 'if there is non implementation, then rather than solving this problem, they simply introduce new legislation.'<sup>73</sup> This has led to a hard comment being made to the neutral leader of the EU; '... the shortcomings of the Lisbon agenda reflect the weaknesses of the Commission's internal organisation and working practices. It is no longer as capable as it needs to be of focusing the Union on a few objectives and ensuring it has the right instruments for achieving them.'<sup>74</sup> The current state of inter DG communication and coordination was described so; 'Inter-service cooperation is "bad" there is no communication at all between DGs.'<sup>75</sup> The result of the lack of DG communication and coordination was the creation of '... a mirror unit in DG ENT which checked up on DG ENV and went from 2 to 20 staff members. This did help to increase DG ENT power; the REACH file shows this increase

<sup>68</sup> European Voice 03.03.2005 Vol.11 No.8. Anspach Raphael UEAPME spokesman stated 'Next parliament 'must think small'.

<sup>69</sup> Interviews with Commission Officials: DG ENV

<sup>70</sup> Centre for Industrial Studies; Milan, Institute for Social Research; Milan, 'ex-post evaluation of the observatory of European SMEs, final report, prepared for European Commission, DG Enterprise. p.127

<sup>71</sup> The Economist Special Report Europe's Future, May 27 2006 p. 22

<sup>72</sup> UEAPME Press release 14.09.2004 *SMEs expect coherent policies from new Commissioners.*

<sup>73</sup> Interviews with Commission Officials: DG ENT

<sup>74</sup> European Voice Vol.9 No.3315.10.2003 *Do less to deliver more-a challenge for the next European Commission.*

<sup>75</sup> Interviews with Commission Officials: DG ENT



in ENT power over the last five year. It is harder for DG ENV to enforce things against DG ENT.<sup>76</sup> The increase in decentralisation had several unexpected consequences, there 'was a loss in the shared and sharing of a legal culture.'<sup>77</sup> Food policy is an area where DG III was frequently involved in 'bitterly contested' arguments between it and DG Agriculture. DG III came into conflict with DG XI Environment which is often at loggerheads with the industrial DGs.

The forced combination of two and half DGs to form DG ENT, which was performed in 1999-2000, led it seems to the practical disbandment of the much smaller and weaker DG SME which had been doing a good job at promoting SMEs throughout the nineties. Over all in the new DG, staff were reduced from 1000 in the three old DGs to 800 in 10 directorates and 51 units. Finally staff are said to have fallen by 30%, and the DG was well known to have all too frequent changes of staff and positions. There was a major drop in morale and hints that the DG had lost its culture. Projects were dropped and disruption was a problem. There were a range of reasons said to have been behind the reorganisation, part of it was no doubt logical enough but a wide range of other motives were stated, including macro ones like Prodi wanting to return the DG and Commission to policy making leadership rather than managing policies. To many within the DG and outside, combining units concerned with multinationals with a few dealing with small companies was not logical and would lead to problems. There were three units from the 51 which appeared to deal directly with the needs of SMEs. The subsequent weakness of SME representation after 2000 can be seen to have its origins in the loss of its institutional backer. DG Industry (DGIII) an older, larger, and more powerful DG was put in charge of the combination and creation of the new DG and it is not so surprising to find that the SMEs seemed to go under. Several SME projects well performed by the DG were either stopped or handed over to other organizations. The reorganization resulted in large numbers of Heads of Unit leaving and these are the backbone of the Commission, thus in part the subsequent weakness of the DG vis-à-vis other DGs and DG ENV in particular, can in part be explained by the loss of these experts. For a while the DG seemed to be searching for a task and reason to exist, despite the Commission's stated intentions. Officials in other DGs underlined this problem for the DG. All in all, for a while, the reorganization proved negative for the DG and as the REACH debate revealed DG ENV, or elements in it, benefited from the lack of DG ENT organization. DG ENV had seemingly to be reined in by a complex series of personnel reorganizations, successfully from the Commission stand point, and now the DG ENT mirroring unit has been more or less stood down.

The MSs have allegedly been increasingly interfering in the DG.<sup>78</sup> MSs had apparently begun to 'lean on their Directors.'<sup>79</sup> So although 'formally there is no new political influence in terms of quality more pressure is applied.'<sup>80</sup> When the MSs want to stop a piece of legislation in the DG they have allegedly been seen to get their staff placed in it to achieve just that.<sup>81</sup> The Director General of the DG was stated to have often been German, reflecting German concerns about industry.

The current organization has, like all DGs, seen changes resulting from Commission de-centralisation. One effect of decentralisation on the DG's internal structure was the dramatic increase in the number of staff involved in the horizontal units, those coordinating the DG internally and with the rest of the Commission, rather than drawing up legislation. Before, the

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<sup>76</sup> Interviews with Commission Officials: DG ENT

<sup>77</sup> *ibid*

<sup>78</sup> *ibid*

<sup>79</sup> *ibid*

<sup>80</sup> *ibid*

<sup>81</sup> *ibid*

personnel budget was done by 10 people now there was a directorate of 120. The conflict between the horizontal and the vertical (sectoral units) exists in every DG to a greater or lesser extent. The problem is alleged to be one of too many would be bosses in horizontal units, whose numbers are constantly increasing, and an ever widening split between horizontals and verticals. To try and compensate for de-centralisation inter DG problems, there are more and more inter-service consultations to deal with them and coordinating departments are ever increasing to perform these.

There used to be more sector units, there are now more horizontal ones. In sector units the real legislation used to be done by the specialists which in DG ENT meant engineers who dealt with the details and specifications which make up the bulk of the final document. However 'over time there are less technical elements in legislation than there used to be; no minister understands what is in the legislation as it is so technical.'<sup>82</sup> The move is therefore in the direction of out sourcing the 'technical content' and details to be completed by 'external institutes.' The legislation drawn up by the DG has got less technical as a result and 'the quality of the legislation has improved.'<sup>83</sup> The main splits in the DG itself are between the former SME DG elements and the heavy industry ones; 'DG coordination and communication got worse after 2000 and this is a big problem.'<sup>84</sup> Effectiveness and efficiency also seemed to suffer; a fact resulting from this and the increasing bureaucracy in general is that the budget approved by the EP was not and could not be committed as there were so many procedures. The various parts of the DG seemed not to have a clue about what the rest of it was doing and this seemed to be a relatively new problem. The communication between the lower ranks of the DG and the political layer seemed allegedly not to exist. The constant reorganization of the main horizontal directorate intended to coordinate the DG, was indicative of the problems of pulling the DG together and indirectly showed the scope for internal networks and policy-making ones to fill the gap left by the directorate. The seemingly vague and at times contradictory policy towards SMEs, for example, seems to underscore the weakness of the centre in the DG. One last point, the DG was said to be 'good at being the worst at archiving and filing.'<sup>85</sup>

The staff and hierarchy in the DG saw certain changes. Directors allegedly gained more power in the decentralisation of the DG and saw their competences increase at the same time as MS influence on them increased. But over time with the increase in bureaucratization, the Directors seemed allegedly to have taken to 'micro management. Directors were more fearful and want to control things more.'<sup>86</sup> This led apparently to a reluctance to delegate despite the need for even more delegation being present; 'Communication, delegation are not there . . . It is hard to bypass Directors and that means delays.'<sup>87</sup> The relationship between the Commissioner and the Director General seemed to have been easy and relaxed unlike in some DGs, and staff seemed not to be tempted to circumvent the hierarchy by going to the Cabinet or the Commissioner. Heads of Unit took the burden of the Kinnock Reforms and appeared to be seriously over worked; there seemed to be an opinion that this was hardly beneficial for the enlargement. They also faced the need to be made mobile which seemed to be creating problems of loss of expertise and continuity. This seemed to be a problem for the Commission when facing the EP and Council. A generally jaded view of the reforms was present and a view that they were methods to drop responsibility on the lower ranks to allow the Commissioners and the political leadership even less accountability and responsibility. The example of the budget was given for which the College had been responsible which was then made the

<sup>82</sup> Interviews with Commission Officials: DG ENT

<sup>83</sup> *ibid*

<sup>84</sup> *ibid*

<sup>85</sup> *ibid*

<sup>86</sup> *ibid*

<sup>87</sup> *ibid*



responsibility of the DGs. This does not at first glance throw a good light on the College as a political leadership.

The problem of bureaucracy and its increase combined with the reforms is discussed now. The general idea of the reforms was not questioned by most of the officials but rather the manner in which they were carried out and their suffocating bureaucratic character. The DG was allegedly becoming more ' . . . centralised and hierarchical than ever and that . . . there is more and more focus on procedures.'<sup>88</sup> Some figures provided illustrate the problem: '40% less time for policy and Heads of Unit and Desk Officers are easily doing 5 times more procedures-taking double the time; 60-70% more time is spent on the budget . . . '<sup>89</sup> for which there are said to be; '50% more procedures;' and the 'Budget was not committed due to the number of procedures, 2-3 times as much time taken for calls to tender procedure.'<sup>90</sup> One official stated ' . . . Everything was slowed down; it used to be 50-50% for financial control and management of projects, then 60-40 now 95-5%. We avoid making studies for projects.'<sup>91</sup> He added 'there are 5 times more procedures than before; they took short cuts but not illegal ones in the old Commission.'<sup>92</sup> This last statement reflects those noted by others before, that the over formal, ever increasing amount of procedures and often empowered actors force officials to leave the gridlocked formal ways to adopt informal ones which at least function. The alleged increase in behind the scenes Commission chairing of the Council and other committees to ensure efficiency reflects this. Units and staff have to show determined entrepreneurial skills to get anything done, the Commission and DG fortunately allowed this to happen, by accident at times, it seems. It an interesting thought that some of the political skills of the officials, so important for promoting integration and new integratory bursts are no doubt honed by their need to demonstrate opportunistic self sufficiency in the Commission itself. The REACH dossier with its close connection to the very highest political layers allegedly enabled the Desk Officers concerned to get around the bureaucratic log jams.

The picture remains of a DG which appeared to be geared to being technocratic and close to big industry and powerful lobbies. Whatever lip service was paid to the SMEs the facts did not seem to support the rhetoric. Whilst the DG did not show too many obvious indications of Policy Networks, these are stated by several observers to be in existence and powerfully so. At times in its history, or rather the history of DG Industry, its main element, there have been indications that the DG had been captured by various industrial groups who had almost dictated legislation. It had also been taken over by MSs at various times. The sectors have shown themselves able to create problems for the NMSs, and the SMEs have apparently suffered, as the DG was seemingly not able to move itself mentally or organizationally from its dependence and commitment to big industry. The slow speed of decision making owing to the co-decision process allegedly encouraged Policy Networks and backroom deals to occur even more:

'The application of the co-decision procedure has enhanced the importance of policy networks as arenas for informal bargaining on most internal market questions. The procedure is complex and potentially time consuming . . . Co-decision has made the EU a more pluralistic system of government, but also increased its reliance on informal deals and backroom bargaining.'<sup>93</sup>

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<sup>88</sup> Interviews with Commission Officials: DG ENT

<sup>89</sup> *ibid*

<sup>90</sup> *ibid*

<sup>91</sup> *ibid*

<sup>92</sup> *ibid*

<sup>93</sup> See note 19 Peterson; Bomberg (1999)p.84

It is worth noting that the amount of time that officials were spending interacting (presumably) in networks in particular with the EP and the Council. For the DG as a whole the time spent dealing with the Council went up by 10-20% and dealing with the EP from 20-25%, for some units up as much as 50%. Whilst this was in part no doubt due to the move to the co-decision procedure the increase in Council communication seems to suggest that more back-room deals and bargaining were occurring. Thus the time available for DG or Commission work alone, like drawing up legislation, had presumably decreased accordingly. The need to have another major reorganization in 2004 to bring the DG into line with the Lisbon criteria and to house the new Competitiveness Commissioner, seemed to show the weakness of the DG prior to this and its inability to properly further the Lisbon Criteria. Whatever else the new competitiveness vice President Verheugen has stated he will aim to amend the legislation to make it more industry friendly,<sup>94</sup> a tacit acceptance it would seem that DG ENV had won out so far. The dramatic 2000 reorganization probably eliminated many networks positive and presumably negative ones too.

The enlargement process was affected by the DG and its and the Commission's weakness at various times. In the earliest phase of the European Agreements various sectoral lobbies essentially got in first, before the NMSs, and ensured that the EAs were more negative than they needed to have been and that sectors were protected. Arguably this was due to Commission political leadership weakness and also that of the EU which still has a deficit in this department.<sup>95</sup> The SEM was stated to have been hardened for the NMSs, and that the pharmaceutical industry was more or less invited by the DG to 'identify regulatory problems in the CEECs and to propose solutions . . .'.<sup>96</sup> NMS officials said that the 2000-2005 DG was badly organised and structured.<sup>97</sup> Whilst clearly anti-enlargement networks are not evident, it can be said that the overall weakness of the DG owing to splits and reorganisations left DG ENV stronger and this was problematic for industry in general. It was stated that the many reforms affecting the DG and in particularly those affecting the Heads of Unit were negative for the enlargement as they simply did not have the time to concentrate on all their tasks at once. Parts of the DG were stated to contradict each other, according to NMS officials, who also criticised the excessive bureaucratic procedures which doubled or trebled. Inter Service communication and Coordination was criticised and that DGs had too much discretion and the decisions reached had been 'odd'.<sup>98</sup> The reorganizations of the DG were stated to have generated problems combined with its 'old fashioned policy'.<sup>99</sup> That said, things were considered to be gradually improving, after the 2004 reorganization the DG was considered to be less bureaucratic with the French style on the way out, before problems had been strangely combined now they were more logical according to some and 'enlargement changed its (the DG) culture, there are two Directors under forty. And the Commission is trying to cut down on bad bureaucracy'.<sup>100</sup>

### 9.2.7 DGs: ANY ENLARGEMENT WINNERS?

At this point a short answer to the initial question to be answered by the thesis will be offered. As to which of the DGs benefited from the enlargement the answer has to be all of them, in one sense. That is if the enlargement is linked to the reforms and their effects, and their pres-

<sup>94</sup> The Economist February 5 2005 Charlemagne, *Europe's dash for growth*

<sup>95</sup> Shackleton M and Peterson J. The conclusion in Shackleton M and Peterson J (ed.); *The Institutions of the European Union*, (2002) Oxford, Oxford University Press p 352 'The EU sometimes seems woefully short on political leadership more generally'

<sup>96</sup> Young A and Wallace, H. *Regulatory politics in the enlarging European Union*, (2000) Manchester, Manchester University Press p119

<sup>97</sup> NMS officials

<sup>98</sup> *ibid*

<sup>99</sup> *ibid*

<sup>100</sup> *ibid*



ence in the overall cycle of the Commission with the downturn following the end of the Delors Commission. In terms of greater sectoral independence and power for the Director Generals and also to a degree the Commissioners DGs have increased their power and prestige, but largely at the expense of the Commission as a whole.

DG ENT would appear to have defended itself successfully against the rest and in particular DG ENV and, given its hosting the new super Commissioner for the EU economy, it can be seen to have been successful in promoting its cause. However, in terms of resources it does not seem to have changed over much. Generally the DG seems to have viewed the enlargement positively.

DG ENV has paradoxically seen staff numbers increase whilst its profile has become more confused. Its strongly environmental agenda seemed to have been diluted and its strength in the Commission as a whole, at the same time as its resources increased. DG ENT stood down its mirroring unit that watched over DG ENV, presumably because it was no longer seen to be a threat. The answer to the DG ENV paradox could no doubt be that the increased resources were a sort of reward for the move towards the current economically minded Commission. It had before faced opposition from the EEA and DG ENT. Overall the DG seems to have viewed the enlargement positively and as a positive development.

DG REGIO saw its resources increase most with the enlargement and yet it also saw the proportion of the budget that it wanted to supervise diminish and a powerful information campaign against its activities reduce its appeal and that of EU solidarity. Whilst it resisted the more wholesale reform that the Sapir Report recommended, its future seemed and seems unsure. Enlargement with the increase in possible MSs requiring a share of the funds seemed to have led to a decline in support for the DG and the sector as a whole. There seemed to be growing tension between its directorates, which the enlargement exacerbated. Again elements seemed to have seen the enlargement as a threat to scarce resources.

DG AGRI seemed to have been in a demoralised state, although it was getting a large proportion of the budget. Resources seemed to be more than adequate although staff hoarding by Heads of Units seemed to be continuing apace, which no doubt resulted from anxiety about future staff allocations. The resultant staff surpluses seemed, at times, to have resulted in unnecessary regulation occurring to justify the staff concerned. Better staff allocation could undoubtedly have happened. The discretion of some of its officials and their departments was deliberately diminished. The enlargement seemed to have been perceived as a threat by many in the DG and related reforms resisted.

OLAF saw its resources soar over the period since 1999. Although this was largely due to EP pressure and willingness to see the resources allocated. It fitted very neatly into the EU's desire for greater control to be placed over financial resources and arguably the MSs' desire to slow integration right down. The big winners of the enlargement were those offering and involved in greater bureaucracy and the production of bureaucratically waterproof paperwork. Fear of OLAF investigations were cited by Commission officials as reasons for being reluctant to even do positive activities. OLAF added edge to the bureaucratic reforms. Fear of corruption and irregularities arising from the enlargement no doubt also assisted in strengthening OLAF's position.

The EEA saw its numbers and resources increase considerably. With new MSs it saw the funds allocated by them to it soar, i.e. it has enjoyed a direct financial benefit as a result of the enlargement. The room for manoeuvre and the opportunities afforded by the enlargement al-

lowed the agency to trump DG ENV by enlarging before the DG. This provided the agency with considerable kudos. The increasing acceptance of the DG that the EEA can and should have a role in the evaluation of legislation is a sign that it had successfully carved out a niche for itself.

In summary, one must state that the real winners were OLAF and the EEA in general and finally DG ENT. Within all DGs those connected with increasing and strengthening the bureaucratic corset saw their numbers increase most i.e. personnel officials and accountants. Top levels in the hierarchy saw their powers and competences increase and this no doubt was compensated to an extent by the new corps of officials. These new corps were presumably less bound by any organisational loyalties and dependencies.

#### THE EU SINCE DELORS: MS ASCENDENCY

So having reviewed the theory outlined so far and the facts derived from the case studies it is time to look to see if there are broad long term trends visible which support the facts and theory. We are of course looking to see if there are signs of increased MS strength and willingness to use it and greater fragmentation of the EU and the Commission. Furthermore Policy Networks should be benefiting from the political weakness in the fragmented EU. In the light of the above there should be a trend of Commission reforms and bureaucratization to try and curb both MS influence and sectoral fragmentation. Unsurprisingly the enlargement would be expected to have suffered as a result. So on to the first trend.

The balance in the EU has been stated to have shifted since the Delors era firmly in favour of the MSs as the following quotation indicates, 'The decline of the Commission, evident throughout the 1990s, has continued since the Prodi Commission took office in 1999.'<sup>101</sup> As has been suggested in the theory section, this does not have to be seen as a failure in integration, or proof that the MSs want a slow Commission. What it does show is that the political/federal aspirations of the Commission as perceived by the MSs in the Delors era have once again resulted in them using their various institutional options to apply the brakes. The following quotation shows the extent of the MS advance:

'The Member States have consolidated their power across a range of key policy areas, most notably, EMU, the CFSP and the emergent Common European Security and Defence Policy (CESDP). They have also considerably enhanced their role in domains, such as social policy, not previously been considered an area of "high politics" . . . New methods and techniques, such as OMC, (Open Method of Coordination) moreover, have enhanced Member State power, while further downgrading and displacing the Commission.'<sup>102</sup>

The MSs are said to 'have asserted their control, while marginalising the Commission (and the European Court of Justice) in a number of areas.'<sup>103</sup> One of these areas is said to be that of the economy.

There has arguably been a decrease in EU wide MS solidarity:

'Moreover, a decrease in solidarity among EU states . . . has brought into office heads of state or government that are less instinctively supportive of ever closer Union, less ready to recog-

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<sup>101</sup> See note 2 Kassim; Menon (2004) p. 92

<sup>102</sup> *ibid* p. 92

<sup>103</sup> *ibid* p. 93



nise the achievements of integration, and prepared to challenge the Community method with the Commission at its heart.'<sup>104</sup>

This has been visible in the Structural Funds discussion and decrease in the money available discussed in the chapter on DG REGIO. Although given the major problems with the funds and their past, less solidarity might have been better anyway. However as a pay off system the funds, as well as the CAP, were important for lubricating agreement between MSs who benefited and MSs who arguably gained less from liberalising markets. The discussions about multi speed Europe is another symptom of the decreasing interest in solidarity and likely to become more pronounced.<sup>105</sup> The decline in solidarity and the high thresholds set for the NMSs in the enlargement, combined with longer term restrictions in the movement of their citizens, reflect the caution and pessimism of MSs towards the possibility of solidarity given such large differences. It was maybe expecting a lot to expect that solidarity such as existed in the old Europe would be possible in the new, given the number of new members and their problematic economic situation. Economic downturn and domestic political concerns about unemployment have replaced long term thinking with short term political survival. Protectionism and conservatism in the form of rejecting the new services directive became all too much the norm. But the decline in solidarity is particularly noticeable between old MSs and is therefore worrying. One might wonder whether the weak Commission during this period was also responsible for both, or at least contributed.

Most of the actors in the EU have become less centralized and more sector oriented. Within MSs the methods of New Public Management have encouraged a process of breaking administrations down into governmental agencies and less hierarchical controls. Within Europe the growth in the number of sector oriented agencies has increased and the trend for more of them continues. There seems to be a process of sectoral growth occurring at the expense of coordination and central control. The role of the Commission in all this has been traditionally to encourage sectors and sectoral actors, at times at the expense of the MSs.

And yet at the same time the policies intended to benefit sectors seem to be experiencing problems. There seems to be something bizarre that various policies of the Union, which the Commission has been key to generating, have all too often had negligible effect on the sectors they are supposed to help, cost huge sums, generated vast amounts of debate keeping large numbers of officials, at every level of government, employed and ever increasing numbers of consultants and lobbyists. UCLAF-OLAF was created to deal with disciplinary problems and mismanagement and yet the serious cases reported have risen and remain stubbornly high, suggesting a greater problem.<sup>106</sup> The EEA and DG ENV are there but the environment has not broadly improved in Europe.<sup>107</sup> DG AGRI secures massive funds for the farming lobby arguably to protect the small holder farmer, but the majority, 80%, goes to 'rich farmers.'<sup>108</sup> DG REGIO sets out to help regions but achieves greater regional disparities.<sup>109</sup> Implementation has not improved over time and yet the Commission seems to be doing, in certain areas, even less than before to enforce it. The Lisbon criteria to improve Europe's economic performance were agreed upon but not enough has happened. It seems quite likely that the increase in sector strength is not and has not been coordinated effectively, thus the sectors are nullifying e-

<sup>104</sup> See note 2 Kassim; Menon (2004 p. 92

<sup>105</sup> Nugent, N. *Themes and Prospects in At the Heart of the Union* (2000) Basingstoke, MacMillan press. p.299

<sup>106</sup> See OLAF chapter

<sup>107</sup> EEA, the European Environment: State and Outlook 2005 report. p.8. 'Looking back, the last report, published in 1999 concluded that, despite 25 years of Community environmental policy, environmental quality in the European Union (EU) was mixed and that the unsustainable development of some key economic sectors was the major barrier to further improvements.'

<sup>108</sup> See note 19 Peterson; Bomberg (1999)p.163

<sup>109</sup> *ibid* p.149

lements of each others work. Without wanting to over exaggerate there seems to have been something of a crisis in the coordination of the sectors, and thus the EU.

The European Council is perceived by some as having become far more dominant and pervasive and in a way which is less positive towards the Commission:

‘ . . . the Heads of State and Government laid claim to leadership across a broad swath of existing policy areas. Objectives were set under two headings – preparing the transition to the new economy and modernising the European social model . . . The European Council has not only defined the aims, but will also orchestrate their realisation. It has assumed ‘a pre-eminent guiding and coordinating role to ensure overall coherence and the effective monitoring of progress towards the new strategic goal.’<sup>110</sup>

The MSs, after the Delors era, can be said to have had less trust in the Commission and so to have decided to change their approach, they:

‘ . . . become wary and suspicious of the Commission, and were re-orienting the Union in an intergovernmental direction. Through a process of “learning”, Member States had become increasingly wise to the Commission’s ability to exploit possibilities of expanding EU competencies. Since Maastricht, they have shown far greater vigilance in institutional matters, limiting opportunities for entrepreneurial expansion on the part of the Commission.’<sup>111</sup>

The corollary of being sparring partners as the Commission and MSs often are, is that the success of one is seen as the failure of the other. The Commission tends to overplay its hand and then be arrested by the MSs. Decreases in the amount of legislation leaving the Commission, discussed later, can be seen to be part of the slow down apparent in it and this was not least in response to MS pressure. When combined with large implementation problems for what legislation left the institutions, the picture is one of legislation becoming less attractive and MS resistance growing towards it which is alarming given that most legislation results from MS proposals in the first place. Their suspicion seems to be towards the EU method as a whole and the belief that it is the best method of MSs doing business with each other.

## 9.2 EU FRAGMENTATION

We have considered the trend of increased MS power and willingness to use it and seen that this trend is indeed observable. But the paradox is, that without a strong Commission, the current EU has a problem of coordination and coherence that the MSs are not in a position to remedy. The result is the next trend, that of major EU fragmentation.

‘The EU suffers from twin problems: some of its methods of governance are obsolete; and the system as a whole has become too complex and fragmented.’<sup>112</sup>

In the first chapter we saw how the Commission has succeeded in expanding its remit by fragmenting the MSs and the Council. The neo functionalist process would expect that the fragmentation of MSs into sectors would result in these attaching themselves to the European governance structure above all the Commission. However if the Commission is weak then EU

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<sup>110</sup> See note 2 Kassim; Menon (2004) p. 94

<sup>111</sup> *ibid* p. 92

<sup>112</sup> See note 35 Sapir Report (2003) p.125



fragmentation is the result. There are increasing numbers of political-bureaucratic-sectoral actors<sup>113</sup> who have been empowered to be involved in decisions making,<sup>114115</sup> and a large increase in the number of procedures.<sup>116117</sup> The EU is fragmented into a number of competing actors often with competing sectoral loyalties; the result is complexity and less efficiency

‘Structurally, the Union is enormously complex and potentially involves an extraordinary number, range and diversity of decision makers. It is frequently difficult, sometimes impossible, to shift the EU in any one (especially new) policy direction, thus reinforcing the status quo. Vetoes are abundant and distributed widely, particularly in the Council and its offshoots, thus inviting lowest common denominator decisions.’<sup>118 119</sup>

The list of empowered actors is long: there are the various ministers detached from their national government’s control in the various Councils; the COREPER officials; the national experts and civil servants who attend the Commission-led meetings; the growing number of working groups;<sup>120</sup> MEPs in various roles and capacities as members of national groupings, transnational parties, representing lobbyists and as special committee members; the various more legal actors like the ECJ and Court of Auditors; sector MS officials and experts, sector stakeholders - business and NGOs; Commission staff in various capacities and combinations; Commissioners acting both as MS top politicians and officials, supporting their DG and as College members. The number and range is mind boggling.<sup>121</sup> MLG reflects this new reality and the apparent break down in the traditional governmental structures. A further problem is that responsibilities are also widely dispersed between actors:

‘Responsibilities not only overlap, but the same institutions (Council and Commission) also play different roles depending on the domain. Lack of clarity in the core functions of the institutions is detrimental to both efficiency and legitimacy.’<sup>122</sup>

More government means in the EU in particular, more complexity, potentially more inefficiency and more informal sectoral Policy Networks.<sup>123</sup> This is especially the case where policy management is concerned, since many in the Commission top ranks are not over fond of it and leave the Policy Networks to deal with it.<sup>124</sup> The growing complexity of the environment in which the Commission operates seems to have left it unable to cope; ‘Many of its problems of efficiency and accountability stem from a failure to come to terms with growth in complex-

<sup>113</sup> See note 95 Shackleton; Peterson (2002) p.349. ‘There are more players-more governments and affected interests, plus the EU’s increasingly assertive institutions themselves-making compromises more difficult to strike.’

<sup>114</sup> *ibid* p.353-354. ‘The price often seems to rise inexorably as more voices must be accommodated at every turn, especially as the EU enlarges.’

<sup>115</sup> See note 55 Hooghe (2000) p.104-105

<sup>116</sup> See note 95 Shackleton; Peterson (2002) p.349. ‘One result is that member governments have experimented with new forms of decision making...to achieve collective governance. In so doing they have compounded the EU’s dizzying complexity.’

<sup>117</sup> See note 19 Peterson; Bomberg (1999) p.256. ‘More generally, “normalised” politics are precluded by the EU’s vast number of procedures for decision making, reliance on backroom bargaining and blurred lines of accountability.’

<sup>118</sup> *ibid* p.31

<sup>119</sup> See note 6 Mazey; Richardson (1997) p.179. ‘This complex array of actors (which increasingly included regional governments) makes the EU policy process especially hard to characterise.’

<sup>120</sup> See note 19 Peterson; Bomberg (1999) p.37. ‘Their political effect (Council working groups) is to expand enormously the number of actors involved in EU decision making, particularly by pulling in officials from national capitals. One seasoned Commission official argues that “it is precisely at this level that most European legislation is made, where most lobbying takes place and where most of the “national interest” is defined and decided.’

<sup>121</sup> Wallace, W *Collective Governance in the EU political process* in (eds) Wallace, H and Wallace, W. *Policy Making in the European Union* fourth edition (2000) Oxford, Oxford University Press p.533 A list of actors provided.

<sup>122</sup> See note 35 Sapir Report (2003) p.89

<sup>123</sup> See note 19 Peterson; Bomberg (1999) p.86

<sup>124</sup> See note 7 Metcalfe; (2000) p.833, 837

ity rather than size per se.<sup>125</sup> The introduction of new actors and procedures does not seem to have led to less power for others and so to an equilibrium, but rather to gridlock.<sup>126</sup> This is hardly likely to increase transparency,<sup>128</sup> rather it adds to the incredible complexity.<sup>129</sup> It is a curious fact that extensions of QMV will probably increase the importance of 'transectoral Policy Networks centred upon the European Commission' and so add to the democratic deficit problems in the long run.<sup>130</sup>

In the EU outlined above, organisational structures and hierarchies can dissolve and have done, with Commission officials able to out manoeuvre their managers owing to the large number of alternative principals they can refer to. The structure of the EU forces many, if not most, key bargaining to be done and decisions to be "set" in the informal pre legislative phase and consensus is arrived at here.<sup>131</sup> The formal proceedings are then more of a sort of rubber stamping. A recent study of EP committees noted some weaknesses of these in that particularly the first reading process in the EP, is seemingly opaque and seems to be operating in a rule free manner;<sup>133</sup> lobbyists can easily apply pressure at this point. Furthermore meetings are held between the various European institutions very early on<sup>134</sup> seemingly prior to the formal proceedings. As a commentator pointed out the MEPs have such loose mandates that agreeing to issues is cheap for them.<sup>135</sup>

Evidently national systems of government are also complex and fragmented to a certain extent but not to the degree of the EU. Thus whatever the similarities a leading authority stated; 'The EU political process is particularly fragmented,'<sup>136</sup> and another stressed; 'The macro-level analysis undertaken here shows that, in the EC/EU, authority is dispersed. Compared to most nation-states, the EC/EU is a considerably more fragmented political system.'<sup>137</sup> That national governments are increasingly fragmented is also, in part, due to their interactions

<sup>125</sup> See note 7 Metcalfe, (2000) p 826

<sup>126</sup> See note 95 Shackleton, Peterson (2002) p 349 and p 354

<sup>127</sup> See note 19 Peterson, Bomberg (1999) p 20 and p 257 'We have found the EU to be an unusually differentiated polity, in which broad policy initiatives are difficult to co-ordinate. An equally enduring trend in EU decision making is that major change in policy often seems impossible without a change in process, which produces a kind of "organic accretion" of decision making procedures'

<sup>128</sup> *ibid* p 256 'More generally, "normalised" politics are precluded by the EU's vast number of procedures for decision making, reliance on backroom bargaining and blurred lines of accountability. The politics of the EU remain underdeveloped, and its democratic legitimacy weak.' And further on the same page, 'As it is now, EU decision makers generally operate with both surprisingly wide discretion and predictably low legitimacy'

<sup>129</sup> See note 95 Shackleton, Peterson (2002) p 349

<sup>130</sup> See note 6 Mazey, Richardson (1997) p 192 'Under QMV no national government can be relied upon to "deliver" preferred policy outcomes and groups must take note of that in further developing their lobbying strategies. If nothing else, QMV is bound to make these strategies more transnational in their focus. The pluralistic nature of the EU decision-making process, combined with the reliance of Commission officials upon outside expertise, will facilitate the continued development of transnational sectoral policy networks centred upon the European Commission. In terms of the policy process, the existence of effective EU level policy networks is functionally beneficial. However, the considerable influence wielded by organized interests within the European Commission and the close-of-ten informal links which exist between some groups and Commission officials have served to increase public unease about the Community's "democratic deficit"'

<sup>131</sup> See note 19 Peterson, Bomberg (1999) p 22

<sup>132</sup> Shore, C. *Building Europe. The Cultural Politics of European Integration*, (2000) London, Routledge p 226 'As this study indicates, and as most EU analysts accept, decision making in the EU is extremely undemocratic: the result of covert deals, bargaining and compromises struck between ministers and their permanent representatives in the Council of Ministers, conducted behind closed doors. The European Parliament is not a legislature, it does not elect a government, and it lacks credibility as the democratic conscience of the Union.'

<sup>133</sup> Neuhold, C. 'The Committees of the European Parliament, conflictual foras or consensual arenas?' presentation made at the research colloquium 1 Politics and Culture in Europe, held at Maastricht University Faculty of Arts and Culture on 24 05 06

<sup>134</sup> *ibid*

<sup>135</sup> Official commentator's points made to Neuhold, C. 'The Committees of the European Parliament, conflictual foras or consensual arenas?' presentation made at the research colloquium 1 Politics and Culture in Europe, held at Maastricht University Faculty of Arts and Culture on 24 05 06

<sup>136</sup> See note 121 Wallace, W (2000) p 528

<sup>137</sup> Daugberg, C. *Reforming the CAP: Policy Networks and Broader Institutional Structures*. In *Journal of Common Market Studies* Vol.37. No 3 September 1999 p 422



with the EU, quite apart from the increasing complexity of policy making in general; 'In North-South relations and in biotechnology . . . fragmented networks, which link the Commission's Directorates-General to functional agencies within national governments and to interest groups, make for a struggle even to define a coherent agenda.'<sup>138</sup>

None of the parties involved in the EU are willing to relinquish power and this is the root of many of the problems and results, in part, in a fragmentation of political authority. This is what makes the EU's fragmentation problems hard to remedy. The political leadership necessary to lead, rationalize and reform is not there. Indeed it is increasingly more difficult to find any real focus of authority:

'A second feature of the EU system that leads to fragmentation is the absence of a focus of authority. Unlike most West European democracies (but in a similar manner to the United States) political authority itself is fragmented throughout the EU institutions . . . This fragmentation is further reinforced by the absence of direct executive powers for most EU services.'<sup>139</sup>

This leads to and "creates" a situation where there is 'A high degree of autonomy of Policy Networks in EU governance.'<sup>140</sup>

Despite the need to rationalise and simplify, the EU, in fact the Commission with its 'civil society' concepts seems to want to involve even more stakeholders and actors in its policy making procedures which may result in more complexity and finally chaos. This happened with the Structural Funds as the Commission pressed to have ever more sub national actors involved to, in part at least, enhance its ability to divide and rule in its endless struggle with the MSs. This led to a policy plagued with vested interests which has achieved doubtful results. The same will probably happen elsewhere, since finally, funding and legislation are similar as money is often involved in both. There seems to be a basic truth that the EU currently often means complexity and compromise, and more compromises, which finally leads to a total complexity that leads to confusion and or a pressure for simplicity; 'It has, however, reached a stage of excessive complexity and sometimes confusion.'<sup>141</sup> This sense of current complexity and the pressing need for change is stressed by several authors.<sup>142</sup> Ironically, the central goal of a technocracy, efficiency also suffers. Bearing in mind that the EU and Commission had the mission to encourage collective action, the following quotation reflects inefficiency; 'The EU's institutional system often seems to lack the capacity to foster truly collective action in the pursuit of shared goals, and moreover appears enormously complex, arcane, and far more convoluted than its counterparts at the national level.'<sup>143</sup>

Regardless of anything else, highly fragmented political structures seem to have some negative side effects and one of these is resistance to change and reform. In essence the greater the number of possibilities there are for effective vetoes to be placed on a policy or element of it,

<sup>138</sup> See note 121 Wallace, W (2000) p.528

<sup>139</sup> Peterson 1995:78 quoted see note 15 Page (1997) p.19

<sup>140</sup> See note 19 Peterson; Bomberg (1999)p.31. 'The EU's treaties are astoundingly vague. Links between societal interests and EU decision makers ('agents') are weak in the absence of traditional structures-such as strong political parties-for aggregating interests. EU policy networks may be 'captured' by agents who shape major decisions in ways that effectively pre-empt them before Member States can 'make' them.'

<sup>141</sup> See note 35 Sapir Report (2003) p.89

<sup>142</sup> Börzel, T. *Policy Networks A New Paradigm for European Governance?* EUI Working Paper RSC No 97/19 p.24. 'It is argued that policy making in the EU takes place in a highly dynamic complex environment where public actors at both European and National level are increasingly dependent on the resources of public subnational...as well as private actors of all territorial units...Hierarchical coordination either through the Commission or the national governments has become inefficient.'

<sup>143</sup> See note 95 Shackleton; Peterson (2002) p.348

then the more likely it is that compromise and reform resistance will result as is the case in the EC/EU as the next two quotations show. 'Political systems in which the structure disperses political power to several decision-making centres provide for many veto points which can be used, often successfully, to mobilize opposition to reform.'<sup>144</sup> And thus 'Furthermore, the EC/EU is a highly fragmented political system with many veto points . . . Therefore, the reform process concentrated on accommodating the interests of all decision-making centres, that is primarily the Commission and the 12 Member States.'<sup>145</sup>

The question of democracy and how far EU fragmentation and complexity affects it needs closer examination. In order to accommodate the requirements of the new actors to have a 'real' say, new processes and procedures are decided upon which become overly complex and counter productive. As so often happens changes can be made for the best of intentions, such as making decision making more democratic by increasing the powers of the European Parliament via co decision. Although the effect of this introduced complexity is that decision making has been driven more and more into opaque corners from which it is hard for actors to really be sure who gave the initial impulse or the final nod. The more complex the institutions and the more power the EP has received so the more backroom deals are done.<sup>146</sup> Democratic elements need to be located in a structured democratic context and environment to function as intended, and that is not really the current EU reality, rather actors or extra procedures tend to be added instead of system reform which is not necessarily beneficial:

'Bringing more players into the system, whether through a stronger role for the European Parliament or national or regional legislatures and perhaps even more importantly, their staffs, might not reduce the democratic deficit. Increasing the range of interests and bodies that have to be squared might increase the difficulty of identifying accountability, turning a democratic deficit into a less democratic surfeit of institutions, groups, and individuals, all with some sort of valid claim to represent European citizens.'<sup>147</sup>

It is fair to question who then gains from the complexity if not democracy; the answer seems to be that officials and the opaque network members gain considerably from it. The greater the complexity and number of actors the worse the system and the worse the quality of the decisions made: 'too many cooks spoil the broth' or 'too many captains on one ship.' The complexity of the CAP and its inefficiencies illustrates this. A similar process to that which happened in the Commission itself; its excessively complicated rules and bureaucracy drove its own officials to take short cuts to get their jobs done at all. The logic seems to be the more 'controls' the more transparent the organization will be, in fact the opposite seems to be the case. Thus it is to be expected that with enlargement and even more actors, more complexity will result, not less, and more pressure for informal deals and more power for policy networks finally. These will reluctantly accept enlargement and integrate it and the new actors into their ranks and then resist any more changes.<sup>148</sup>

Several eminent commentators agree on the crisis that is facing the EU, owing in part to its excessive complexity and so confusion, which is shown in the treaties themselves,<sup>149</sup> and of

<sup>144</sup> See note 137 Daugberg, (1999) p.423

<sup>145</sup> *ibid* p.423

<sup>146</sup> See note 19 Peterson; Bomberg (1999)p.86

<sup>147</sup> See note 15 Page (1997) p.163

<sup>148</sup> See note 142 Börzel (97/19) p.29. 'But what makes policy networks so special is that they provide, above all, an arena for non strategic, communicative action to overcome deadlock situations and problems of collective action.

<sup>149</sup> De Schoutheete, P. 'The European Council' in Shackleton M and Peterson J (ed.) ; *The Institutions of the European Union*, (2002) Oxford, Oxford University Press p. 43. 'The complexity and confusion of the treaties...' and 'It took legal and linguistic experts, under the guidance of COREPER, two months to establish in legal terms what had been decided at Amsterdam.'



course the Commission. The first to mention is Delors himself who stated, with the Council of Ministers particularly in mind; 'We are confronted now with a situation that cannot last. No one is in control.'<sup>150</sup> The next dealt with the complexity:

'The EU can act as a rule maker, a policymaker, a regulator, a supervisor or a facilitator. Those are very different roles and it should be no surprise that having the same institution(s) perform such a variety of tasks creates perplexity. In short, the picture that emerges is one of confusion and tension. Confusion is created by the complexity of the EU system and the diversity of the roles performed by the union in its relationship to the MSs, sub-national entities and private agents. Tension comes from the gap between goals and means. It is hard to reconcile the view "from above"- the goals enshrined in the treaty and announced by the European Council - and the view "from below"- the nitty gritty of legal acts and budgetary choices. This gap is a natural consequence of the political character of the EU.'<sup>151</sup>

The same report continues in the same vein:

' . . . summing up, our assessment is that the EU is now confronting a fundamental choice: it must either abandon some of its present ambitions or seriously address governance weaknesses. One possible response would be to conclude that its ambitions should be scaled down to what it can credibly commit to deliver . . . A streamlined, scaled down union that would concentrate on providing monetary stability, a pro-competitive environment, and development assistance to catching up countries - but not endorse responsibility for growth, innovation, employment or social cohesion - would certainly be preferable to an EU that claims to have higher ambitions but is not able to deliver.'<sup>152</sup> The Commission is also stated to be unable to decide on its ideal 'administration' form and so to be ' . . . ripe for change and its role is in need of re-definition.'<sup>153</sup>

An important element of EU and Commission fragmentation is related to sectoral fragmentation and ample evidence of this was found in the research as was stated in the last chapter. Also the findings concurred with the increasing number of 'actors' competing in the EU environment. In particular, as the Commission became more fragmented with its DGs behaving increasingly like empowered actors themselves, and their units aligning themselves with actors in Policy Networks. Also the fragmentation of MSs has been discussed which has likewise added to the actors in the EU and available for Policy Networks.

### 9.3 COMMISSION FRAGMENTATION AND MS INFLUENCE

Underlying EU fragmentation is the trend of Commission fragmentation. The MSs are a major factor in achieving this for the reasons stated before. That said, the Commission has to share responsibility for the state of fragmentation in its own ranks. The following section makes both these points clear. A useful starting point are two quotations which sum up many of the Commission's problems:

'Dissatisfaction with the Commission's performance prior to the 1999 crisis attributed inefficiency to excessive bureaucracy and over-centralisation combined with power struggles a-

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<sup>150</sup> Delors, J. quoted in *European Voice* 16-22 July 1998

<sup>151</sup> See note 35 Sapir Report (2003) p.80

<sup>152</sup> *ibid* p.115

<sup>153</sup> See note 4 Spence, (1997) p.97

mong DGs and the intrusion of national interests into personnel decisions and policy making.<sup>154</sup>

‘Too many overlapping approvals and excessive checking of decisions made at lower levels result in sluggish responses and unclear divisions of tasks and responsibilities. Co-ordination among DGs has been seriously deficient. The lack of effective means of resolving jurisdictional disputes and managing conflicts have had a damaging impact on the coherence of the Commission and its public image.’<sup>155</sup>

A brief listing of the observations gained from three years of research and elite interviews in the Commission is called for now which broadly support the above. The Commission in the post Delors phase went through a period of decentralisation, both controlled and uncontrolled, the latter occurring first and the former attempting to contain and formalise what was already fact. The following quotation has been mentioned in part in the first chapter, but it is worth quoting it in full owing to the statements made, and the fact that the speaker is the second in rank to the Commission president. He stresses that the post Delors era saw considerable power going to the senior bureaucrats who also defied the Commission’s stated aims to follow their own agenda. Power effectively had devolved to the DGs and bureaucrats and away from the political leadership

‘European Commission vice-president Guenter Verheugen has spoken out strongly against the power of high-ranking civil servants within the commission who are able to influence decisions according to their personal whims . . . In an interview with German daily Sueddeutsche Zeitung, the German commissioner in charge of the important industry portfolio said “the whole development in the last ten years has brought the civil servants such power that in the meantime the most important political task of the 25 commissioners is controlling this apparatus . . . There is a permanent power struggle between commissioners and high ranking bureaucrats. Some of them think: the commissioner is gone after five years and so is just a house keeper, but I’m sticking around,” he continued. He suggests that his own project to simplify 54 EU laws has fallen foul of stubborn commission bureaucrats. Before the summer he “strongly criticised internally some general directorates who evidently did not want to take the heed of the commission’s aim to reduce bureaucracy seriously, because it did not fit in with their own ideas . . . The commissioners have to take extreme care that important questions are decided in their weekly meeting, and not decided by the civil servants among themselves . . . Unfortunately it sometimes happens in the communication with member states or parliament that civil servants put their own personal perspective across as the view of the commission,” he told the newspaper. Citing a concrete example the 62-year-old social democrat commissioner said that commission bureaucrats had tried to sort out the use of pesticides between them and the issue only came to the attention of their political masters – the commissioners – when the bureaucrats fell out over the issue. “In my opinion, too much is decided by civil servants,” he said in conclusion’.<sup>156</sup>

When considering Commission fragmentation a quotation from the Commission itself regarding its state in 1997 sets the scene rather nicely:

‘Managing a high level of integration will require a thorough re-evaluation of the Commission’s executive and management functions and a change in its administrative culture.’<sup>157</sup>

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<sup>154</sup> See note 7 Metcalfe (2000) p. 826

<sup>155</sup> *ibid* p. 821

<sup>156</sup> Mahony, H ‘Commission bureaucrats are getting too powerful, says Verheugen’ EU Observer 05.10.2006

<sup>157</sup> Agenda 2000 Report, Commission of the European Communities (1997) referred to in Cini, M. Norms, Culture and the Kinnock White Paper in Dimitrakopoulos, D. (ed) *The Changing European Commission*. (2004) Manchester, Manchester



Whilst the quotation does not directly mention fragmentation it does reflect the profound problems facing the Commission and the urgent requirement that changes were required for the future. Fragmentation is one of the vital elements that will have to be addressed for the changes to be performed. The effects of EU fragmentation reach their apex in the Commission; 'One of the most enduring myths surrounding EU decision making is that the Commission is a purposeful, single-minded institution. In reality, it is highly fragmented, even if it often unites in defence of its institutional prerogatives, as it did in 1999 when it resigned en masse.'<sup>158</sup>

On the surface the Commission appears to be a unified bureaucratic institution with many Weberian touches. However, in several ways the Commission services are anything but a Weberian bureaucracy despite appearances. As the case studies showed, the majority of policy-making activity takes place at the level of the desk officer, at grade A7/8. There is very little control placed on the official and also little direction set, higher management appears to enforce direction by a process of filtering and eliminating proposals. Promotion often seems to defy explanation even at the lower levels in the hierarchy, and officials refer to many factors influencing promotion and performance rates low in their lists and reports. This leads to a situation where political power is diffused throughout the Commission and not neatly contained in the College of the Commissioners. It leaves the officials, de facto, the masters of a particular policy dossier and the network of actors: MEPs, sector stakeholders and MS officials working on it. The organigrams of the Organisation suggest a strictly hierarchical structure with explicit levels of management and yet the staff and management at the main policy making levels call it at times a 'flat organisational structure.'

In fact the existence of a very excessively Weberian hierarchy, which has at times become more rigid, combined with officials who are the mainstay of policy making and are extremely well educated, has apparently produced the predictable result of complex networks forming between the Desk Officers and the other parties directly involved in the legislative process. These networks seem to be both effective and complex and have evolved in response to the complex rigidity of the management system. In order for policy to be made in such a system complex networking around the management is often essential for anything to happen. Officials learn very quickly that being 'creative' in networking is one of the most important aspects of their job, both for policy making and also for promotion. Part of the reason for the officials' discretion is to be found in the ethos of the organisation with its emphasis on engrenage, but part too is found in the many cleavages which criss-cross it. Effectively the officials are located on islands separated by network cleavages. They find themselves defined as it were by national, sectoral, dossier networks. Thus the Commission has fragmentation potential at the best of times. Less leadership and idealism and less legislative generation can be expected to result in Commission fragmentation at the level of the official as well as at the DG level.

The problem of inner Commission coordination was constantly stated to be a problem by almost everyone interviewed. The following quotations in the literature are interesting reading and say all that needs to be said:

'One of the perennial complaints about the Commission is that it is too fragmented. For an organisation whose business is integration, the Commission is embarrassingly poorly inte-

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University Press p.70 Whilst the paper referred to is for 1997 that the Kinnock reforms were calling for similar things evidently not much had changed in the intervening years.

<sup>158</sup> See note 19 Peterson; Bomberg (1999)p.39

grated. It lacks the capacities to contain rivalries and jurisdictional disputes among DGs. The DECODE report amply demonstrated the deficiencies of internal co-ordination and the way in which the workloads associated with co-ordination have grown in recent years.<sup>159</sup>

The author adds:

‘The widening range of the Commission’s responsibilities increases the need for better co-ordination among DGs. Established co-ordination methods are inadequate to ensure coherence and consistency of the increased range of specialised and more interdependent activities. The ambiguities surrounding the role of Commissioners’ cabinets seem to have confused rather than clarified the processes of co-ordination . . . In October 1999 the Commission published proposals for strengthening co-ordination. By the time the White paper Reforming the Commission was published, only a passing reference to co-ordination remained.’<sup>160</sup>

Almost all the officials interviewed in the Commission and the NMSs reiterated that the DGs simply do not communicate or coordinate and that whilst this has been a constant problem for the Commission it seems to have grown worse. The fragmentation of the Commission is shown at its clearest in the weakness of its central co-ordinating capacity. One notable example of this is the Secretariat General which was always supposed to be the coordinating organisation of the Commission. With the decentralisation of the Commission, which no doubt had some strategic uses, the SG’s own ability to coordinate activities seems to have been diminished.<sup>161</sup> This fits with the implicit view of one academic author when he states; ‘Furthermore, efficient organisations centralize in order to decentralize.’<sup>162</sup> The weakness of the centralizing department and all centralisation itself was made clear in the interviews with its staff and their frustration was barely concealed. They know, as do observers, that the Commission has great sources of potential if correctly aligned and thus effectiveness and efficiency, but there has to be a clear strategy and the requisite managerial skills to achieve this and those are lost in the current system. Details about the SG perspective are in the next section. The following quotation also makes clear that decentralisation has almost been made concrete by the Director Generals and difficult to reverse, although this is being attempted, a point which quotations made by European Commission vice-president Günter Verheugen and referred to previously made very clear:

‘Experience at the national level suggests that strong leadership is necessary to achieve fundamental reform. However, power and authority are fragmented in the Commission. At the political level, the College lacks cohesion, while the Commission President, even after the Treaty of Amsterdam, is little more than *primus inter pares*, lacking the authority to impose far-reaching change and the institutional resources to oversee it. At the level of the services, meanwhile, Directors General enjoy considerable autonomy, which they are keen to preserve.’<sup>163</sup>

As was stressed at the beginning of this section there has been increasing penetration of the Commission by the MSs. That they were very much present in the cabinets has already been stated, and that cabinets have been like mini Councils,<sup>164</sup> but they have also been more willing to apply pressure to their respective Commissioners to achieve what they require:

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<sup>159</sup> See note 7 Metcalfe; (2000) p.826-827

<sup>160</sup> *ibid* p.828,

<sup>161</sup> Discussion with SG Official

<sup>162</sup> See note 7 Metcalfe; (2000) p.827

<sup>163</sup> Kassim, H. *A historic accomplishment: The Prodi Commission and Administrative Reform* in Dimitrakopoulos, D. (ed) *The changing*

<sup>164</sup> *ibid* p. 99



‘Certainly, the inclination and ability of Member States to place, and use, their nationals in the Commission as sources of information and influence varies considerably, but there is less respect for the independence of the Commission. Even in countries where Commission independence has historically been regarded as sacred such as the Netherlands, contact with the Dutch Commissioner is no longer regarded as taboo.’<sup>165</sup>

The Commission becoming a highly fragmented bureaucracy had gone hand in hand with growing signs of nationalism in Commissioners<sup>166</sup> and also inefficiency in projects; no doubt all these were related.<sup>167</sup> Whatever the legal position of Commissioners may be with regard to their neutrality the following can be said ‘Similarly, in other areas of competition policy, governments have multiple means to put pressure on “their” Commissioners and the Commission as a whole when controversial measures arise, so that they may successfully prevent decisions.’<sup>168</sup> The penetration into the Commission extends right down into the ranks of the staff; ‘As Kassim and Wright have put it, the Union’s bureaucratic system is “shot through with national officials and influences.”’<sup>169</sup> The Member States, to sum up the paragraph, are stated to have even got around Prodi’s reform of cabinets ‘ . . . Member States have continued to use other means to ensure that their interests are articulated and protected within the Commission.’<sup>170</sup>

The many EU and Commission problems that have been listed and more will follow show that the Commission sometimes appears to have problems coming to terms with or even deciding on its identity and role in the EU. It seems to be caught between playing it safe and being ambitious. That said this is the organic tactic of the vaccine which seems to dictate Commission actors’ behaviour whether they are fully aware of this or not. In part this appears to lead to confused organisational behaviour as with the apparent attempt by President Prodi to base the Commission on that of a MS civil service structure. By this is meant the location of Commissioners and cabinets in their respective DGs, much like with MS ministries. On the one hand this seems to reflect ‘federal’ governmental ambitions<sup>171</sup> on the other it could be argued to reflect an attempt to regain control of the organisation from the MSs. This seems particularly to be the case when considered in conjunction with forced reductions in cabinet sizes combined with making them multinational and the merit promotion approach which has been applied to the services. The reorganizations have been, in part at least successful.<sup>172</sup>

<sup>165</sup> see note 163 Kassim H in Dimitrakopoulos (2004) p. 99

<sup>166</sup> See note 19 Peterson; Bomberg (1999)p.76 ‘Moreover, the Commission began to reveal itself as a highly fragmented bureaucracy and really a political system in itself. Despite their oaths of neutrality, individual Commissioners often found themselves supporting their own Member States when decisions had to be taken as to whether internal market rules were being violated. In 1995, the Greek Commissioner, Christos Papoutsis, blocked a move to take Greece to court for an illegal ban on toy advertisements. The Commissioner from Ireland, Pdraig Flynn, foiled an attempt to haul Dublin before the ECJ to challenge laws requiring Irish radio stations to play 30% Irish music.’

<sup>167</sup> *ibid* p.76. ‘The Commission also seemed incapable of taking clear, timely decisions of the kind needed, for example to create a single market in financial services (McHugh 1996). Poor internal management hampered the introduction of the “CE mark”, a guarantee that products meet EU health and safety standards.’

<sup>168</sup> Schmidt, S. *The European Commission’s powers in shaping European Policies* in Dimitrakopoulos, D. D. (ed) *The changing European Commission* (2004) Manchester, Manchester University Press p.109

<sup>169</sup> See note 2 Kassim; Menon (2004) p. 99

<sup>170</sup> *ibid* p. 99

<sup>171</sup> *ibid* p. 100; ‘The early decisiveness shown by Prodi in declaring the Commission to be a putative government, which led him to locate Commissioners and their cabinets in the same premises as the Directorates-General for which they are responsible-just as ministers in the Member States are based in their departments-has not been followed up.’

<sup>172</sup> *ibid* p. 99; ‘Finally, although there seems to be some evidence that cabinets have been less ready since 1999 to act as spokesmen for the national capital and for chef and special chef meetings to resemble mini-Councils (Peterson and Bomberg, 1999:39)-the consequence of Prodi’s decision to locate the Commission and the Cabinet in the same building as the Directorate-General...’

Having discussed inter DG problems it is worth mentioning the fragmentation of DGs themselves internally which has occurred. DG internal communication and coordination have been very bad resulting in attempts, some more successful than others, at centralizing them. The Commission and the DGs are more politically top heavy, in part, to counter balance knowledge power from below. More micro management by higher management usually the Director General level was seen in some DGs. DGs were found to be divided internally into horizontal versus sectoral units, and also into sectoral units and their associated Policy Networks, which maintained their adherence to the initial sectoral goals of their DG and those which did not. Units seem to have been left largely up to themselves with even important issues like enlargement. The large numbers of reorganisations in some DGs showed the extent to which they had to go to strengthen coordination and communication. In some ways this is a natural development, if there is not enough active control asserted by the hierarchy. Interestingly internal DG problems seem to match inter DG problems, decreases in antagonism between DG ENT and DG ENV occurred after DG ENV had been re centralised. The absence of a real 'clerical layer' and normal archiving became more problematic as did the increasing number and complexity of bureaucratic procedures.

The irony is that the current situation in the EU and the Commission is remarkably similar to that which faced Monnet in the France of the late 1940s. He had to organize a major reform of the French state for it to modernize and he and his colleagues had to organize the leadership to achieve the reform. He was all too aware of the problems of an absence of any central coordinating body and sectoral fragmentation which is that most bureaucratic of diseases:

'In their separate areas, the civil servants had worked very well, each doing his best to develop that sector of industry for which he was responsible. But while they had incidentally consulted a few industrialists, they had not collated their respective inquiries, with the result that their plans were neither well coordinated nor ranged in any order of priority. On the contrary, all were competing for the same limited resources of energy, manpower, and foreign currency, which at this rate would soon be exhausted. . . . People in different administrative departments or different branches of industry spoke to one another, but their respective intentions remained secret and uncoordinated. Everyone was entrenched in his own position.'<sup>173</sup>

It was his goal to create and head the necessary body to remedy the situation. He set up the planning office to set priorities for the other ministries as was explained in the theory chapter. Monnet was also very aware that the French civil service was excellent at promoting and maintaining the status quo but not good at enterprise. It seems most appropriate at this point to stress the similarities between the situation that Monnet faced then and that which the EU is engrossed in currently which the following quotation illustrates well:

'Yet, the EU's lack of hierarchy creates problems of management as well as political drift. At earlier stages in its evolution, the EU's business might have been managed effectively by the Hallstein or Delors Commissions . . . Now, the reality is different. If it is accepted that optimal EU policy outcomes are possible only if objectives are clearly specified . . . then the Union's lack of any hierarchy of policy goals, as well as any body or institution able to impose one, are highly damaging.'<sup>174</sup>

It is possible to suggest that Monnet would himself have recommended radical change to resolve the current EU economic problems and sectoral fragmentation. He wanted to 'transform the French establishment' and the 'training' of the men who ran it in order to then tackle the

<sup>173</sup> Monnet, J. *Memoirs*. (1978) New York, Doubleday and Company, Inc p.235

<sup>174</sup> See note 95 Shackleton; Peterson (2002) p.353



reform.<sup>175</sup> Leadership by his planning department was required in France directly coupled to the legitimacy of the Prime Minister's office to which it was hierarchically attached. The EU needs something similar; it needs to be modernized and reorganized.

### 9.3.1 COMMISSION FRAGMENTATION AND ITS CENTRE

#### THE SECRETARIAT GENERAL (SG): VIEW FROM THE CENTRE

As part of the methodological approach three interviews were carried out in the Secretariat General (SG); the central coordinating organisation of the Commission.<sup>176</sup> The general perspective of the interviewees was that of caution and cynical pessimism and not the dynamic goal setting leadership that one might have expected of a 'head office' sort of organisation. This is understandable given the fact that the Commission in recent times simply has not been an organisation with a dominant head office. The SG's apparent weakness is proof of the process of sectorization; 'The SG is seen to be another DG and in the Commission is seen to be a source of bureaucratic burden. The SG feels like a DG and competes for resources.'<sup>177</sup> Increasingly the SG has seemingly become more dependent on the Commission President and as a result 'the SG is becoming closer to the President of Commission and less independent, so the person of the SG will often change now with the new Commission, not like in the old days.'<sup>178</sup> And if more proof were required of the apparent weakness of the SG it is stated to only be as effective as its ability to forge coalitions of DGs to 'get recalcitrant DGs into line.'<sup>179</sup>

The SG's perspective into the lack of DG coordination was illuminating; 'The Commission has many opinions but no centre. The SG needs to "knock heads together" and get DGs to follow a central line.'<sup>180</sup> And 'There are multi splits in the Commission and it is hard to get an agreement and you need an iron fist, but only if a rule is there can the SG insist on it, if not, not.'<sup>181</sup> This was a surprising acceptance of reality to hear from a policy making official in the SG, but candid, as was most of the interview; 'The SG feels it has lost the possibility to bang heads together, i.e. too decentralised, this is a "downside."<sup>182</sup> The decentralisation process, which was intended to improve the smooth running of the Commission, has resulted in problems of coordination; 'The Commission is still centrifugal, some want to reverse it, or at least stop it getting worse'.<sup>183</sup> Communication is also stated to be a general problem; 'There is not really communication in the Commission which is a problem.'<sup>184</sup> DGs are stated to suffer from short term thinking and this is encouraged by the SG as a whole and should be changed.<sup>185</sup> One interviewee sounded positively puzzled at the method of doing business in the Commission when compared to what he knew of MS governmental practices, in particular the defensive hostile manner in which the DGs fought with each other and refused to share documents and used lobby groups to force the issue; 'Leaking to lobbies occurs to get pressure applied to ensure DGs get their way, this happens regularly. The Commission doesn't think as one institute. Involving a wider stakeholder group is disliked. Lobbyists have tried to misuse this.'<sup>186</sup> Attempts by the SG to introduce a standardised approach to management

<sup>175</sup> See note 95 Shackleton; Peterson (2002) p.245

<sup>176</sup> Interviews with Commission Officials: Secretariat General (SG)

<sup>177</sup> *ibid*

<sup>178</sup> *ibid*

<sup>179</sup> *ibid*

<sup>180</sup> *ibid*

<sup>181</sup> *ibid*

<sup>182</sup> *ibid*

<sup>183</sup> *ibid*

<sup>184</sup> *ibid*

<sup>185</sup> *ibid*

<sup>186</sup> *ibid*

agenda planning and so DG management was resisted by the DGs; 'IRMS (Integrated Resource Management System part of the information provision system for Activity Based Management) was very unpopular with DGs. Agenda planning for management was intended to allow monitoring of progress but was seen to be inflexible and didn't meet DGs individual needs. Now they are back to the old system monitoring and developing management plans. A study took place to replace IRMS as there is not a Commission standard.'<sup>187</sup> DGs are said to want to measure their progress but do not accept a Commission wide method instead they act like isolated organisations and bring in consultancies to make checks and recommendations.<sup>188</sup> One result of inter DG competition is slowness and inability to respond when required; 'With Galileo the Commission took so long, as DGs fought over it on scope etc, that the MSs went forwards with their own solution. There were no clear objectives, vague, amorphous objectives at Impact Assessment (IA) meetings.'<sup>189</sup>

The Impact Assessment system of assessing proposed legislation of one DG by putting it up for discussion to all DGs was an attempt to 'integrate' the Commission seemingly first and foremost.<sup>190</sup> Unfortunately the DGs were extremely suspicious about this method of doing business; 'In IAs the DGs are encouraged to consult any DGs which might be involved. But most DGs "shudder" at this idea. They see it as interference from other DGs rather than cooperation with other stakeholders.'<sup>191</sup> If this is not enough of a problem then 'IAs are seen as 'bureaucracy' from SG "bad guys" by Desk Officers. DGs go through the motions but Commissioners don't support it.'<sup>192</sup> The result is that 'IAs are not working as well as had been hoped but the SG is pleased.' Part of the IA plan was also to improve legislative quality in line with the less but better approach and there was said to have been an approximately 50% reduction in policy proposals as a result and also simplification.<sup>193</sup> The Council had called for less spending and 'wiser' legislation and indeed seems in part to have been behind the drive for IAs and has found in them some sort of 'tool' value;<sup>194</sup> The Commission must give the Council evidence and information to possibly reject legislation . . . delay was the unwritten expectation by the Council to result from IAs. IAs forced them to choose between market based solutions or legislation, and not just to choose legislation. The Commission had to provide information which gave the Council teeth.<sup>195</sup> What seems to be clear is that IAs have been turned into part of the political struggle between the Council and the Commission, with the real subsidiarity issues being fought here rather than in the ECJ and also a political struggle between Commission departments.<sup>196</sup> The SG was criticised for reducing the important resource of legislation generation for the policy making DGs; 'DG ENT and DG ENV complain about IAs as less legislation is generated.'<sup>197</sup> IAs are supposed to be even more integrated now and involve the full participation of all relevant DGs, but 'The integrated IA approach is not properly applied, DGs are resistant to it.'<sup>198</sup> In fact there is a situation where 'In effect some DGs do IAs by themselves.' An important element of the problem is the tendency in the Commission to turn reforms on their heads; the IAs should have been applied to see if legislation was required instead DGs decided on legislation and later carry out an IA to get it accepted.<sup>199</sup>

<sup>187</sup> Interviews with Commission Officials Secretariat General (SG)

<sup>188</sup> *ibid*

<sup>189</sup> *ibid*

<sup>190</sup> *ibid*

<sup>191</sup> *ibid*

<sup>192</sup> *ibid*

<sup>193</sup> *ibid*

<sup>194</sup> *ibid*

<sup>195</sup> *ibid*

<sup>196</sup> *ibid*

<sup>197</sup> *ibid*

<sup>198</sup> *ibid*

<sup>199</sup> *ibid*



With regards to the many reforms that the Commission has undertaken, the SG is quite reticent if not negative. The first issue was that of the DGs reducing their dossiers and policy commitments via a 'negative priority' system whereby the DG would indicate how internal capacities could be freed by giving up work, the result was not wonderful; 'no Commissioner replied or offered any, Commissioners and Commission find it very hard to give anything up. It is the fiefdom idea, they don't want to give anything up; they defend their territory, sectors, keep resources and gain more to boost their sector.'<sup>200</sup> Regarding Activity Based management (ABM); 'Activity based management was not logically thought through, it was too focussed on DG objectives. The Commission should have had a stronger strategy. DGs should have been forced to take a common line. ABM was meant to be applied with decentralisation but wasn't, there should have been more integration with decentralisation but there was not.'<sup>201</sup> In fact, decentralisation has brought duplication of tasks and some inefficiencies and seems to have been generally disliked by the SG for this reason<sup>202</sup> and no doubt also for their loss of competences. The Career Development programme (CDR) has had some success in increasing competition between officials and worrying them into working hard according to one interviewee but '... the aim was to simplify but it is very complex.'<sup>203</sup> In general 'Commission human resources, budget and some areas are not working effectively and must be changed.'<sup>204</sup> This was stated after the reform wave, a sobering thought.

The old problem of the Commission wanting quality checks on the surface but not actually applying resources to attaining them occurred again in the SG.<sup>205</sup> This is similar to the DG ENV pattern when facing more infringement problems and stating more effort will be placed on solving them but then not allocating more resources to them. Something similar happened to the under resourced state of OLAF for a while. The SG, which is supposed to be doing co-ordination in the Commission, is understaffed, with the example of the IAs which the SG finally has to approve provided to show this; 'Do they want IAs to work but then why are there no resources for it, only extra tasks for the unit? In DG ENT there are maybe three economic guys or 14 staff in total to oppose just three staff in SG.'<sup>206</sup> Often the SG doubts the work done on the IAs by the DG concerned and sends it back to DG but 'often ... political pressure is applied or the threat of it.' The end result is that 'overworked SG Desk Officers then let it through' and 'less than one half of IAs which get through should have been accepted due to the SG being under resourced.'<sup>207</sup> The Commission as a whole 'goes through the motions' of IAs as with reforms and checking in general, but they do not really support them.<sup>208</sup>

Regarding the enlargement and the ability of the Commission to cope with it, one of the interviewees was quite pessimistic:

'The Kinnock Reforms were due to enlargement. At the Birmingham conference 2 weeks before Kinnock said that enlargement drove his reforms. The College will be unmanageable due to enlargement. Only in 2012 there will be a reduction to 18 Commissioners. The SG has been asked to see how to put Commissioners together on problem based lines. The SG would then serve sub groups and not just the College. Vice Presidents will get more power. But it will be

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<sup>200</sup> Interviews with Commission Officials: Secretariat General (SG)

<sup>201</sup> *ibid*

<sup>202</sup> *ibid*

<sup>203</sup> *ibid*

<sup>204</sup> *ibid*

<sup>205</sup> *ibid*

<sup>206</sup> *ibid*

<sup>207</sup> *ibid*

<sup>208</sup> *ibid*

hard to get the old Commissioners to change. There will maybe be a super Economic Minister.<sup>209</sup>

There seems to have been a major crisis brewing in the area of translation services; ‘with enlargement (there will be a) crisis in translation services.’<sup>210</sup>

To sum up the findings from the SG it seems fair to say that contradictory pressures are present in the Commission and seemingly unable to be contained. It really seems to lack a strong centre although there is said to be a recentralising process underway. According to an official in DG ENT part of the reason for the Prodi reforms was to gradually re-orient the Commission back to its core task of policy making, as it was with Delors.<sup>211</sup> DGs are strong enough to resist reforms or to turn them on their heads, and the centrifugal processes always at work in the Commission seem to be getting worse or at least not improving. The following quotation is useful in illustrating the problem just mentioned:

‘The German commissioner, in charge of Brussels’ industry portfolio, on Thursday (5 October) voiced unprecedented criticism of high-ranking commission bureaucrats for their hunger for power in the EU executive, resulting in a “permanent power struggle between commissioners and high ranking bureaucrats . . . Mr Verheugen said in an interview with *Sueddeutsche Zeitung* that the officials, apart from frustrating key reforms, also sometimes “put their own personal perspective across as the view of the commission” in communication with member states or the European Parliament . . . The affair is likely to heat up what has become an increasingly visible power struggle between the political leadership of the commission – including European Commission president Jose Manuel Barroso – and high officials . . . In a follow-up interview with the *Financial Times* on Tuesday (10 October), Mr Verheugen said that because of bureaucrats’ obstructionism, the commission will this year fail in . . . its offensive against red tape.’<sup>212</sup>

There is formal decentralisation, which instead of assisting the integration of the Commission has had the opposite effect, combined with attempts at bureaucratic integration via IAs which has also been a mixed bag. DG ENV and DG ENT need to generate legislation to prove their worth and efficiency but are then constrained by the IAs which have different efficiency criteria. The IAs aim to integrate the Commission but also seem to have been seen as a cause of friction as less legislation is available to be passed; thus inter DG competition exists side by side with a range of integrating mechanisms. The effect on the enlargement was three fold: firstly, the weakness of the SG and the processes for generating coordinated coherent policies put larger emphasis on the NMS administrative capacities and coordination. Secondly, the Commission which is supposed to protect smaller states, which many of the NMSs are, was weaker and less unified than ever, which could only mean problems for the NMSs. And lastly the prospect for reforms of any sort in the Commission was made worse by its recent inability to communicate and coordinate.

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<sup>209</sup> Interviews with Commission Officials: Secretariat General (SG)

<sup>210</sup> *ibid*

<sup>211</sup> Interviews with Commission officials: DG ENT

<sup>212</sup> Beunderman M. ‘EU officials stand firm after Verheugen attack’ *EU Observer* 10.10.2006



## 9.4 COMMISSION AND DG FRAGMENTATION: POLICY NETWORKS

We have considered the general trends of fragmentation of the EU and Commission particularly into sectors now we will look at one of the forces involved in this in more detail. One of the culprits for this fragmentation which also benefits from it is the Policy Network. That said the Policy Networks have also taken up the slack for the Commission and MSs and ensured that policies continued to function regardless of any political stalemate between the pair.

### 9.4.1 POLICY NETWORKS AND THE DGs

The findings of the research revealed that some policy areas had become dominated by Policy Networks, of which DG officials were members, which were not amenable to change and resisted reforms to the policies concerned. Some sectors and Policy Networks had come to regard the enlargement as a threat to themselves and their main recipients and some actors were powerful enough to impress their wishes onto the enlargement itself. Some units adhering to the initial and now 'old fashioned' sectoral goals of their DG came into conflict with the modernised goals of the Commission and DG. In the cases of agriculture and structural funds, whose reform was and is desirable, the conflict was necessary and yet the resistance of the related policy networks was at times successful. But other Commission departments and networks such as those relating to SMEs and those in the environmental field, which had less support from influential vested interests, were more radically reformed although maybe this should not have happened as it did.

The Commission and also even the DGs can be described as organisations which are extremely vulnerable to networks which are defined as being opposed to the main organisations' goals and missions and often consist of sectorally loyal, policy entrepreneurs. Lower officials had been given greater discretion in the immediate post Delors era and the hierarchy of the DGs had been weakened by the Delors 'breaking of the frame' by his political appointments deep into DGs to ensure that his policies were successfully pushed through. Some DGs were not only themselves directly linked to sector networks and so unwilling to cooperate with each other, but they were and are, prone to internal networks which could mobilize certain elements of sectors if not whole sectors, to oppose in particular new Commissioners and new Commission targets and goals. This is especially the case where the network had been previously in control of the DG and its policy, or, if not totally in control, at least partially so. This was now being challenged by the hierarchies. Small groups, and counter networks are created by the organisations themselves to fight back against the negative networks. Often the negative networks were so in control that only secretive counter networks based around the Commissioner were able to resist them. In the next section an academic states that the same pattern happened in DG VIII as seems to have happened in DG AGRI.

The ability of certain sectors to resist policy reform is proof that a Policy Network is able to organize actors to oppose in various forms the decision to reform a policy. One of the methods of assessing whether or not a Policy Network is active in a field is stated as follows; 'The existence of a Policy Network within a policy field can usually help to explain why groups who benefit from a policy succeed in resisting pressure for radical reform. . . .'<sup>213</sup> When exceptionally a policy is reformed it is due to resistance failing or being crushed. In DG AGRI there was quite clearly plenty of opposition to the CAP reforms and this was organized in certain units although with probable acquiescence by the management hierarchy at various times.

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<sup>213</sup> See note 137 Daugberg, (1999) p. 413

Not only was the opposition there, it was successful. Within DG REGIO the same seems to have been true, and this ability to fight off radical change to their policy is still the case today; some would argue that those who oppose radical change to the policy are right others would argue differently. Given the method of identifying an active Policy Network provided above, the unchanged aspects of the Structural Funds policy seem to make the existence of a well functioning Policy Network likely. The ability of the main recipients of the funds to avoid radical reforms even after the Sapir Report and its recommendations seems to show this. The end result is one which has not been to the benefit of the newcomers and weaker parties like the NMSs. DG ENV revealed a network in action which was able to resist internal attempts to moderate environmentally oriented legislation. This network was also able to resist the economically oriented Commission's policies, rather like DG ENT did to environmental legislation. Both sectors and networks were resilient to Commission wide decided policies. DG ENV's interactions with the EEA, which is at the centre of a network of agencies in the MSs, show that there are some in the DG who are resistant to this network competition to them. DG ENT showed that various networks of actors had been set up at times and some had been removed during a major reorganization. The example of DG ENT also showed that the removal of some networks of actors was not necessarily beneficial for the sector and the EU. In fact the closing down or rather transferral of some networks came immediately prior to a period of organizational weakness and defensiveness in the new DG itself. Arguably, the apparent downgrading of the old DG SME, by being swamped in the new DG ENT dominated as it was by the old DG Industry and its connections to big industry, reduced the smaller DG to network status within the new DG ENT and resulted in the apparent downgrading of SMEs in the new DG. The inability of DG SME to resist bureaucratic take over and downgrading had coincided with its loss of its networks of support, illustrating Downsian logic which suggests that bureaucratic departments aim to insure their survival by establishing a close body of clientele to support it.<sup>214</sup>

It is interesting when considering the various DGs for networks, it appears that DG AGRI and DG REGIO were successful at keeping away reorganisations and reforms, and struggled to keep their policy unchanged. They were both paying DGs and probably had more MS supporters and also clientele. They were the most influenced by Policy Networks and really needed major reorganizations. The logic would appear to be that if a DG has strong enough networks and Policy Networks then it will be able to resist reform and reorganizations longer. DG ENV and DG ENT had lots of reorganisations and their policy areas were more altered, DG ENV in particular. Neither particularly resisted reform and enlargement much, although maybe DG ENV resisted more than DG ENT and had not been as totally reorganized. That said DG ENT in particular was seen to have been weak and not so effective, maybe due to too many reorganisations.

The fact that in order to change policy in a DG there typically seems to have to have been a personnel reorganisation seems to be proof of the power of networks. The staff in the networks evidently have strong views and have loyalties to protect and power over their dossier, more power than the management have and probably more contacts. Indeed the mobility rule which forces staff to move post every five or so years, particularly if the post is 'sensitive,' seems to be indirectly aimed at networks. It is only by physically removing the official from the dossier and its surrounding network that the management can change the way it is being dealt with. The blame does not only lie with the Commission but also with the MSs who are intensely aware of the presence of their staff in certain positions. Staff are said by some to have 'feudal rights' over their position,<sup>215</sup> these rights are supported by MSs which keep a care-

<sup>214</sup> Downs (1967) referred to see note 6 Mazey; Richardson (1997) p.181

<sup>215</sup> Interviews with Commission Officials: DG REGIO



ful eye on their national members in important posts.<sup>216</sup> A major reorganisation ostentatiously directed at a change in policy approach is a good time to quietly reallocate staff and to so redirect policy. Even at the top of the Commission, personnel are changed and moved around to achieve policy changes. The introduction of the Commission reform agenda required a major bout of political appointments and re-organisation before it could take effect; 'For example, the President's and the Commissioner's powers of appointment allow them to appoint their "own people" in key posts and push reforms forward.'<sup>217</sup>

It seems fair enough to posit the notion of DGs being, at times, first and foremost members of their sectors and related networks and secondly members of the Commission. As one official explained the fact that DG ENT resisted environmental legislation and DG ENV as it did, despite the Commission and EU's decision to have the environmental legislation concerned, was sectorally oriented resistance, and showed little Commission and European project loyalty.<sup>218</sup> The DGs routinely resist College attempts to make them place Commission unity first and foremost. The attempt by the Prodi College to introduce reforms aimed at coordinating the DGs and integrating them and their staff closer together into a Commission wide unity, led to the DGs resisting the College and effectively dropping the reforms that they did not want and turning the rest on their heads. Attempts at introducing standard methods for management and data processing to the DGs, which were devised by the SG, were rejected as bureaucratic duplication and unwanted. Impact Assessments by the SG were often resisted and resented generally even though their goal was to achieve better coordinated legislation and a better coordinated Commission. Fiefdoms appear to have had more importance than the Commission and project as a whole. One personnel staff member said quite openly that many of the senior management in DG AGRI were against the reforms<sup>219</sup> and this seems to have been the case in most of the DGs. Re-organizations of the DGs internally were carried out to enforce control of the DG's management over their staff and their networks. But Commission wide attempts at the same thing via mobility rules and Career development were resisted or used to maximise the DG management's position. Internal DG uniformity seems to be easier to achieve than Commission wide uniformity. The Commission has yet to centralize the sectors fully and has merely increased the bureaucratic work load.

The background to the growth in Policy Networks has been also to do with the situation in the MSs. By this is meant the increase in decentralisation in the national administrations of many MSs:

'The current style of reform in administrative systems is to delegate increasing amounts of authority to the lower echelons of organisations and to diminish the degree of hierarchical control exercised by central agencies and political officials. Furthermore, another part of the "New Public Management" is the redefinition by agents of principals as "political masters" to principals as "clients" or "customers". These changes make ex ante control over national bureaucracies exercised by the Commission much more difficult to make truly effective.'<sup>220</sup>

This trend has been continuing apace throughout the 1990s which has also been the time in which the Commission has been weak. Given that weakness in political leadership, which is

<sup>216</sup> See note 4 Spence, (1997) p. 75.

<sup>217</sup> Dimitrakopoulos, D and Passas, *A Governing without Government?* in Dimitrakopoulos, D. (ed) *The Changing European Commission*. (2004) Manchester, Manchester University Press. p. 155

<sup>218</sup> Interviews with Commission Officials : DG ENT

<sup>219</sup> Interviews with Commission Officials : DG AGRI

<sup>220</sup> Peters, G. *The Commission and Implementation in the European Union: Is There an Implementation Deficit and Why?* In Nugent, N (ed) *At the heart of the Union*, second edition, (2000) Basingstoke, Macmillan Press, 2000 p. 201

true of the EU in general,<sup>221</sup> is stated to allow maximum bureaucratic influence<sup>222</sup> and bureaucrats form networks to get their work done, increases in network power seem to have been inevitable.

EU political fragmentation and MS – Commission sparring are two of the obvious causes of Policy Networks. Of course the networks add to the problem of fragmentation as well with their stress on a particular sector. Ministries in MSs fight hard enough between each other and have strong sectoral identities and that is on a relatively small scale; the broader European level makes the struggles even sharper. It is not surprising to find the Commission ministries (DGs) fighting hard with each other and often producing confused and contradictory policies.<sup>223</sup> The fragmented political state of the EU seems to mean that Policy Networks will have to emerge to enable policy to be made and enforced at all. That these networks will enjoy too much discretion is related to their unofficial nature, which is also of course what makes them appealing as well as necessary. An amusing quotation by an academic from the Public Choice School about the motives of actors and how complexity can work for them follows:

‘ . . . a moderate reform, and not a radical one, was enacted mainly because it was in the interests of farmers who want subsidies, in the interests of agricultural ministers who want rural votes, and in the interests of bureaucrats who want complex regulation which, in turn, increases their power base, their responsibilities, the number of staff members and their career possibilities.’<sup>224</sup>

There is also the issue of lack of oversight which is to the advantage of networks as a whole and Policy Networks are no exception. The political fragmentation of the EU and the number of problems of political control of the executive makes this a very real problem. If there was more control and accountability in the EU and it was less fragmented then there would be less scope for the networks, and also less need for them. The losers are the political masters who have lost and are losing control of their respective institutions. The other loser is of course the tax payer who is not organized into a sector as such and so into a Policy Network. Tax payers are known to be badly organized if at all and it is easier to placate sector actors with subsidies than it is to worry about the tax payer. This should for this very reason be at the heart of parliamentary concerns, however if the EP or rather many of its MEPs are involved in Policy Networks, as seems to be the case, this protection is weakened.

One leading academic mentioned in the theory section is clear about the problem of EU sectorisation and fragmentation:

‘Policy Networks are under managed because the constituent organizations do not invest in the capacities needed to cope with interdependence . . . The management deficit in Policy Networks is a combined function of inadequate organizational capacities, lack of clarity about the roles and mutual relations of different organizational actors and insufficient means of co-ordination among them. Even if individual organizations are well equipped to look after their own interests, they tend to pay too little attention to interdependence. In a developing system like the EU, effectiveness depends increasingly on how well the constituent organizations

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<sup>221</sup> See note 95 Shackleton; Peterson (2002) p.352 ‘

<sup>222</sup> Hague, R and Harrop, M, *Comparative Government and Politics an introduction* (1987) Basingstoke, Macmillan Education Ltd p.263. ‘Whether the bureaucracy and the military rule or serve depends primarily on the strength of the other institutions in the political system. As permanent and coherent organisations power gravitates towards them unless more overtly political institutions are capable of providing an effective counter weight. Thus bureaucratic influence is greatest where political leadership is weak.’

<sup>223</sup> See note 6 Mazey; Richardson (1997) p.185

<sup>224</sup> See note 137 Daugberg, (1999) p. 124-31



work together . . . Failure to resolve or even face up to the problems of managing interdependence is often rationalised in terms of self interested bureaucratic politics or, in the EU, national self interest.<sup>225</sup>

The result is that the EU finds itself in a 'disturbed reactive to turbulent'<sup>226</sup> environment as explored in organizational theory. In turbulent conditions the 'centrifugal tendencies of organizational self interest and bureaucratic politics' dominate and result in 'an atmosphere of mistrust and recrimination.'<sup>227</sup> The 'disturbed reactive' environment is stated to be similar to 'oligopolistic markets in economics,'<sup>228</sup> in the conclusion the author sums up the EU as currently having 'incoherent Policy Networks' and 'policy systems' which require reorganization.<sup>229</sup>

Thus he considers the situation in the EU to be pretty problematic and he locates the problem in the inability of the MSs and Commission to adopt a new approach. The reforms of the Commission are maybe necessary but are chasing an improved form of management that misses the point.<sup>230</sup> In a sense the Commission is fixed in its old mind set, with management meaning organizational changes rather than management of the network reality which is the EU. One does not have to accept all the author's views about the reforms and the need of them to see that the Commission neglects and is not or rather was not interested enough in policy management.<sup>231</sup> Far more it is and always has been drawn to the political, constitutional aspects of its role, namely guarding the treaties and expanding its competences via policy making.<sup>232</sup> It is not only interested in defining itself as a civil service and doing this job well, rather it wishes to compete with ministers and top level government. Policy Network management is neglected by the MSs and the Commission and so their actors have a resultant increase in discretion. This is a curious blindness when considering that Commission itself is very much network based during its dynamic phases. But then that is maybe the old problem, networks are of interest to the Commission as a whole when they are useful in generating new legislation and competences and less when they are geared to management. Then the Commission seems all too willing to delegate management to the networks themselves.<sup>233</sup>

#### 9.4.2 COMMISSION STRUCTURE

The Commission structure and its fragmentation have already been stated, which make it prime territory for Networks particularly given the fact that control over officials is often relaxed for good reasons. It is worth going a bit more into the Commission mentality to underline this point. The Commission was and is an idealistic organisation with a little respected formal structure. It was set up by an idealist small group originally and implicitly relied on networking in the engrenage strategy. For the same reason it was and is vulnerable to such small groups. Staff are and have always been empowered to be dynamic and this can be a strength but equally it can be a liability. Trust and idealism combined with common interests and ease of communication are important for Policy Network building and organization building. These elements were all present in abundance in the first Commission and appear to have been present under Delors.

The danger is that idealism is rather close to loyalty in terms of being an 'affection' and sector and Policy Network loyalty may well replace Commission loyalty. This may well be the case

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<sup>225</sup> See note 7 Metcalfe; (2000) p.829

<sup>226</sup> *ibid* p.833-834

<sup>227</sup> *ibid* p.834

<sup>228</sup> *ibid* p.834

<sup>229</sup> *ibid* p.837

<sup>230</sup> *ibid* p.832

<sup>231</sup> *ibid* p.822,823

<sup>232</sup> *ibid* p.822,823

<sup>233</sup> *ibid* p.833

if the Commission or rather the specific College at any given time are considered to be not properly defending the true Commission and European interest. Officials will be drawn to sectors and related networks if there is not a strong gravitational pull from the centre. Loyalty to sectors will be stronger than abstract loyalty to the Commission as an organization, if this is stripped of its European idealism torch bearing attributes. Many of the staff interviewed stated their idealistic motivations and it seems fair to guess that many of them are idealistic and loyal as a whole and that this will latch onto the most deserving cause. This is not so odd given that an idealism based organisation should attract elites and idealists. Another point raised by some was that the generalists in the Commission and the horizontal unit officials tend to be more loyal to the Commission and the European ideal than sector unit officials and experts. The predilection of the sectoral fixated Commission to home in on this group has the effect of having experts whose expertise may well become, or be, more important to them than any more abstract ideals particularly if these are seen to be unrealistic for the sector and or negative. Thus there are two forces which provoke networks to resistance, the first is loyalty to the old method of running things both in terms of the old DG method of doing things and or the old method of promoting Europe. The second is loyalty to the sector and other experts with whom officials have more in common than with other Commission officials in general. Of course linked to this last point is that officials may well have developed positions of great power and influence in a sector as happened in DG AGRI as a result of their long term interactions with their particular sector members, and they will be most reluctant to lose these and see other members of the network losing out as well.

What is very noticeable is that the Commission relies a lot on networks to counter networks. The most obvious is the use made of Cabinets and advisors to the Commissioners who enable them to bureaucratically form counter networks within the DGs to control the services. At times the DG service's hierarchy behave somewhat like an outside network pursuing their own ends in trying to interrupt the official's business. Director Generals have resisted the Kinnock Reforms intention to empower Heads of Unit to assess their staff via CDR. Instead the Heads of Unit can provide some points to the staff member whilst the rest are distributed by the Director General. Given that Heads of Unit have often been seen to be important Policy Network members, this move seems less than accidental. DG AGRI showed quite clearly how the Commissioner and a small inner group were called together to force through the more radical mid term review reform of the CAP against expected resistance by DG members and the MSs supporting them. The point is that the Commission structure is, whatever its formal appearance or because of its formal appearance, a hotbed of networks and that these find support for internal struggles externally, and that the opposite also occurs seems inevitable. The weaker the central authorities of the Commission and the weaker the European ideology the greater will be the likelihood of the officials maximising their discretion particularly in Policy Networks. The strength and stated existence of fiefdoms in the Commission support the basic view that it lacks internal resistance to them. Normally dynamic officials were and are desirable given the need for the Commission to lead integratory drives. But when the opposite is the case, then such officials will become a liability and attempts will be made to control them more. The Policy Networks of which they are members will also share the same fate. These can then turn defensive and against the reforming College. Although, towards the end of the defensive phase in the vaccine cycle, dynamic Policy Networks and officials become desirable again.

#### **9.4.3 NETWORK MEMBER MOTIVES**

As was outlined above the motives of the networks do not have to be negative, far from it, they can be seen as highly idealistic. The network that seemed to have existed in DG ENV was highly motivated and idealistic. Indeed it might seem fair to consider its members to have



been the true environmental idealists who refused to allow this great good, the environment, to be abandoned for economic goals. The network was true to the founding goals and motives of the DG<sup>234</sup> which had as an organization gradually been changed from its environmentally activist line towards becoming a more mainstream DG.<sup>235</sup> It was also true to the founding goals of the Commission as a whole in driving forwards integration and expanding the European sphere wherever possible. The problem for the network was that the times had changed and that the emphasis in the EU and the Commission as well, was on economic growth and anything which hindered this new goal was to be stopped. From the stand point of some MSs and the current Commission and the DG hierarchy, the network appeared an extremely resilient group which generated legislation which was no longer in mode and resisted reform and controls. It is hard not to see something heroic in the network that stood up for the old values and lost out.

DG AGRI officials can be seen as loyally standing by their clientele and other network members. They sought to protect that which they had striven to build up over the years and considered themselves to be the most expert in. They remained loyal to a specific perspective on agriculture and the place of the CAP in its promotion. In many ways they remained true to the founders of the policy and the goals which were encapsulated in it. Unfortunately the agricultural sector had changed and the officials were no longer protecting small farmers but rather plenty of large agglomerates. But officials still see themselves as protecting the modern Europeans from farming methods as exist in Brazil and other less regulated countries.<sup>236</sup> The CAP was and is seen to be something desirable to have regardless of its faults.

DG REGIO and the resistance to the intended reforms of Structural Funds can also be seen from this perspective. It can be seen as loyalty to the old method of European solidarity and loyalty to network members with whom officials had been working for a long time and no doubt also have been assisted by in the past. The role of Spain and other recipients in supporting the DG over time cannot be underestimated; that the DG or elements in it tried to assist the Spanish was to be expected. Indeed in the interests of efficiency good contacts should be maintained in MSs and these will often be in the Policy Network(s). This is both logical and a choice for the optimal performance of the DGs activity's based on the criteria that had previously been followed. Unfortunately the goal posts had been moved and the new requirements of the new College and related definitions of effectiveness and efficiency made such old standards just that, old, and to be reformed, and resistance to being reformed is a sign of a negative network.

Some of the officials in the networks seem to have benefited considerably in more or less enjoying absolute discretion. Expertise and the ability to exploit the network meant that within the network they enjoyed considerable prestige, particularly so in DG AGRI, but no doubt this was also true in the other networks. On the whole though, the networks do not seem to have been used to deliberately achieve negative goals, rather they were used to protect what had been achieved. But, no doubt, some of the basic problems with bureaucracies and bureaucrats occurred; 'Bureaucracies . . . have the tendency to pursue their own interests and to serve their clients to the possible rejection of the mandates imposed upon them by their principals.' And; 'The tendency of these agents towards defection, in the sense of seeking to pursue their own agendas rather than the agenda required by the Commission, may be increased by managerial

<sup>234</sup> See note 6 Mazey; Richardson (1997) p.184.'

<sup>235</sup> Mintzberg H (1989) *Mintzberg on Management: inside our strange World of Organizations*, New York: Free Press p. 291. 'Members of an organisation who remain true to the norms of its traditional ideology will not take kindly to administrative types trying to routinize it, to enhance their own formalized power at the expense of the established system of beliefs. Furious confrontations can be expected.'

<sup>236</sup> Interviews with DG AGRI officials

changes occurring in most national bureaucracies.’<sup>237</sup> This tendency certainly seems to have been the case in DG AGRI and probably DG REGIO and the other two to a lesser extent. Also officials are stated to have a ‘tendency’ to put ‘organizational interests before policy objectives.’<sup>238</sup>

It seems to be a basic that networks and organizational systems can only continue for a long duration if they have enough support and benefit enough groups be they MSs, officials or interest groups. They change or are changed only when the balance swings considerably against them. It is therefore likely that many in the top echelon of the Commission and MSs recognized the benefits of the networks and what they generated. It is worth speculating, although it is just speculation, that the Commission as a whole was happy to let the networks sort out the management of policies, which they were not interested in. Paying rent to members of the Policy Network via: policy detail discretion and maybe excluding newcomers, was good for the networks and served as lubricants, keeping the network working smoothly, and a worthwhile price for the Commission and EU in general to pay for the efficiency and effectiveness gains that resulted. The notion of pay offs has been examined in the chapter on DG REGIO but it has to be restated that pay offs in the form of Structural Funds and maybe inefficiencies were a worthwhile cost to bear for the general acquiescence of MS and other actors to integrate. Indeed integration would not have occurred without a certain amount of pay offs. Maybe ‘inefficiencies’ in policy details, targeting and delivery, are the cost of the overall increase in integration, which then makes the inefficiency rather relative. For the Commission, key network players could be placated who could have opposed the Commission, and who, as has been seen in the reforming of policies like CAP and Structural Funds, have opposed the Commission. Commission officials kept or extended their policy making powers and were content. But overall the continuation of some of the policies was bad for the organization as a whole as network staff could not be moved around. They were secure in their places owing to network connections, superior knowledge and expertise. Naturally they resisted reforms which would weaken their network position; mobility, one of the Kinnock Reform bugbears was a real threat to network members as was reform of their policy. Their knowledge monopoly would be rendered worthless and their ability to reward network members also diminished. Medieval Monarchs had similar problems when they were unable to give anymore to buy loyalty.

To understand the appeal of networks to most actors, discretion must be considered. In the EU as a whole<sup>239</sup> and in Policy Networks it is hard to locate who said what and decided what.<sup>240</sup> For responsibility adverse politicians and officials this is a joy. Bureaucrats want to secure the ability to make political decisions and yet to remain anonymous; politicians enjoy grand projects but want to avoid parliamentary scrutiny; MS officials enjoy outmanoeuvring their ministers and Policy Networks make this possible. Owing to the very existence of Policy Networks it is inaccurate to say the Commission decided this or that and the same goes for the Council; all studies based on measurements of output from these organizations are in danger of being meaningless if they are used to support notions of the primacy of one institution or the other. In practice via Policy Networks, actors in MSs, Commission, EP and Council can start an idea going in any of the organizations, and they will choose the one that carries least political cost. MSs are aware that nipping an unwanted policy in the bud by effectively taking over a DG is a more elegant means of stopping legislation than a veto or a scene in the Council. The existence of Policy Networks means that MSs have to be alert and flexible and ready with a ‘rapid reaction force’: a seconded official maybe or Commissioner to be activated or

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<sup>237</sup> See note 220 Peters (2000) p.201

<sup>238</sup> See note 222 Hague; Harrop (1987) p.262

<sup>239</sup> See note 121 Wallace, W (2000) p.527

<sup>240</sup> See note 6 Mazey; Richardson (1997) p.179. ‘...it was very difficult to identify the actual origin of any policy.’



dropped into the DG which has the legislative proposal at that point in time. It seems quite likely that MSs hear about policies early via Policy Networks, which would explain the apparent increase in MS targeted activity in the DGs and also shows that Policy Networks can be used in every direction by all their actors. Thus finding where any decision was really started and finally made can only be found out via in depth interviews of the participants in which they either all agree or are all honest. Mere voting on the Council ignores the power of the Policy Network which has set the vote up in the first place. Blaming it on the Commission is the old favourite but equally the Commission is keen to blame it on the MSs<sup>241</sup><sup>242</sup> and the Council. In reality the Commission will be as guilty, if that is the right word, of a policy as the Council and all the Policy Network members who will have been fully involved at every stage.

#### 9.4.4 A THEORETICAL CONSIDERATION

The power of Policy Networks of various sorts can be considerable and decide what happens in a sector and whilst Commission officials are often very important in these networks the Commission itself, as a whole, is not. There appears to be a feeling in much of what is written about Policy Networks that they are beneficial and benevolent and that the Commission can only win as a result. A curious misinterpretation of reality. That the Commission is often too weak and non collegial to be able to benefit from the Policy Network scenario seems to have been ignored. That the Policy Networks will involve a range of actors inside and outside the Commission, in particular in the MSs and Council and that such a combination may well prove more than a match for the often only weakly united College and Commission seems to be ignored. Basic bureaucratic logic would expect officials to try and carve out their own empires, increase their competences and to develop constituencies outside the organisation to provide support when necessary. This is a problematic and negative development. Collegiality and a unifying central organisation, if effective, are better than Policy Networks, after all committees are less easy to manipulate than individuals and commissions active across several industries less easy to manipulate than those concentrated on one industry. The tendency of DGs and Commission to all too easily dissolve into Policy Networks is unfortunate. Particularly given that the result was: reforms opposed; growing policy incoherence and there was even the danger of the enlargement being delayed.

The Policy Network is gradually becoming a more powerful regulatory form of governance maybe in the future more powerful than the Commission itself. That Policy Networks are in the EU set up seems inevitable and that they reduce political authorities to the level of officials seems inevitable too, as both are 'members' of the network. In order to understand the inevitability of Policy Networks' growing importance, the role of Monnet and the era in which he construed his concepts of integration needs to be remembered. Monnet developed his thoughts in a corporatist and communist dominated era. The emphasis was on bureaucrats getting together in various areas of society and the economy and finding common cause in working together and thus creating spillover effects. Finally there was to be a pseudo European wide civil service of likeminded officials networking and pressurizing politicians. So long as the officials were dominated by their loyalty to the European ideal the process would stay on the rails. However, the emphasis on officials working together to get a job done well, contained the seeds for the destruction of the Commission as a collegial body; namely the various sectors might happily spillover and unite under Commission guidance or they might form networks which used the Commission when it served their purposes but could equally

<sup>241</sup> Smith, M. *The Commission made me do it* in Nugent, N (ed) *At the heart of the Union*, second edition, (2000) Basingstoke, Macmillan Press, 2000 p.170,171

<sup>242</sup> Levy R. *Managing the Managers* in Nugent, N (ed) *At the heart of the Union*, second edition, (2000) Basingstoke, Macmillan Press, 2000, p.213

do the opposite. The questions would then be where would the loyalty of the officials lie; with the European project or to their sector constituents? In a world of political authorities reduced to network actors, which actor would prove the more effective the Commission or the MSs? Effectiveness is here defined not in terms of taking over the networks but rather influencing them, for the more powerful networks, ruling them has been out of the question and proven to be absolutely out of the hands of both MSs and the Commission. In a sense Monnet was correct in his fear that sectoral fragmentation would lead to a weakening of the Commission and allow MSs to apply pressure on sectoral actors and so control the sector and the Commission at the top. However the networks are not necessarily amenable to control by anybody. Rather it is the presence of a wide range of powerful actors from a range of institutions that enables the officials within them to play political authorities against each other and to maintain and increase their power. Maybe the position of Les Metcalf as he calls for the Commission to become a network manager is correct, the only the question is whether this is already too late.

The Commission contained and contains the seeds of its own destruction or replacement in it. The Commission's special approach was to create a European level of power by use of its technocratic expertise that was not political in nature and could so be used to defuse political antagonisms. Greater integration, first of all of officials in various sectors and then the sectors themselves would spillover until all sectors were covered. In economic terms a form of vertical takeover of another bureaucratic sector was desired, in economics the food processing manufacturer buys farms to control this level of the supply chain more closely. In governmental terms the MS level officials would be taken over in a sense, bought out, by the Commission level. However the opposite can also happen and seemed to happen more in the 1990s, with MSs beginning to re-nationalise major policies and extending their influence into the Commission via Policy Networks.

The rise of the sectoral Policy Network and a layer of officials probably loyal Heads of Unit and below within the Commission, who either head these networks or are important members of them, would appear to be what the dynamic Commission would have wanted, or intended. Technocratic networks controlling sectors very effectively, ensuring that the networks and the policies they run are protected from MSs and all comers. The trouble is that these networks and their sectors have proven to be too good at their task. The political level of the Commission seems to have lost control over these networks and they are able to outmanoeuvre the Commission hierarchy if necessary. In a sense the officials have taken over and run their sectors usually very much as intended by the interested parties involved, MS ministries and sector actors, but not in the interests of the Commission itself. The Commission always intended to have its officials working closely alongside the MSs own and so co-opting them. Now the networks would quite happily exist and regulate with the Commission and to a degree the MSs, both keeping to the background. Both MSs and Commission are split into sectors with coordination of policy becoming a real problem. The Commission armed its staff with great policy making discretion to allow them to advance the Commission and Europe and so oppose MSs but this discretion can be and has been used against the Commission itself. Maybe the Policy Networks are seeds of a new organisation and elements of a policy making layer organised into sectors under one European political authority.

## **9.5 THE REFORMS AND COMMISSION BUREAUCRATISATION**

We have considered the weakness of the Commission and its fragmentary trends with first of all the MSs weakening its drive and ability to lead and secondly placing their nationals deep into the organisation to keep control over its policies by controlling key parts of important



DGs. Now we will look at the response of the Commission to these threats. As suggested by the theory combined with the case studies a process of bureaucratization followed by a gradual re-launching of the project seems to have occurred. The overall trend will now be considered.

When considering the reforms of the Commission which have been mentioned throughout this thesis, it is necessary to first of all go into the reforms themselves in more depth and then to discuss aspects surrounding them. Two major drives for reform have dominated recent Commission history, the first by the Santer Commission which took over from the Delors College and then resigned, ironically owing to there not having been enough reforms and then the Prodi Commission and the Kinnock reforms. The Kinnock Reforms have been mentioned many times throughout the thesis and they are part of a series of reforms aimed at improving the management of the Commission in general. They seem to be relatively neutral in their calls for; 'transparency, efficiency, accountability, performance, programming and evaluation . . .'.<sup>243</sup> These all resulted in large increases in bureaucratic procedures at all levels of the DGs, but in particular at the level of A4, the Head of Unit level and those below. Mobility was forced at all levels, although again particularly relevant for the Heads of Unit as these are often the older officials with long years of experience and expertise in running the Commission and also vast amounts of knowledge. These individuals are increasingly being made into managers of staff instead of experts with vast amounts of knowledge. The Kinnock Reforms were to an extent in response to President Prodi's desire to return the Commission to its mission based self perception, creating Europe via policy making. This was matched by the Commission becoming more politically active internally and trying to ensure that it was in charge of DGs.<sup>244</sup> Many projects which were more sectorally directed and close to sectors and successful dropped and replaced by lip service statements as with SMEs. Reforms of staff structures and attempts at creating a merit based civil service style structure to reinforce efficiency and probably control over the Commission.

It is worth quickly explaining the use of the word bureaucratisation. It is a process expected of civil service ministries whereby civil servants have clearly defined tasks and a set of rules which have to be obeyed. The tasks can be more or less rigidly defined and forcibly adhered to; the more bureaucratisation there is the more detailed the task definitions become and the rules attached to them. In excess this can result in bureaucratic structures failing to function in the manner intended by their founders and out of accordance with their mission. They even cease to deliver goods and services to the public, efficiently and professionally. Instead there can be growing inefficiency, unavailable staff, low standards of service and finally corruption. This last is, obviously, a virulent symptom of the underlying problem. The Commission is and has been undergoing a wave of negative bureaucratisation for years, as commentators have noted.<sup>245</sup>

In terms of the interviews and findings, what they showed was that the intended reforms had resulted in movements within DGs of staff from vertical units with sector contact to horizontal units planning policy and administering financial and personnel matters. Large increases in financial control units and their status within the DGs occurred. Heads of Unit seemed to have seen their work loads go up dramatically as they were the central management units dealing with the personnel issues which were vital for the Kinnock Reforms. Some of the reforms seem to have been ill thought out and DGs ensured that the effective power over staff which

<sup>243</sup> See note 2 Kassim; Menon (2004) p.74

<sup>244</sup> Spence, D. *Structure, Functions and procedures in the Commission* in Edwards G (ed) *The European Commission*, (1997) Cartmill, London p.104

<sup>245</sup> Most notably The report of the Committee of Independent Experts on allegations regarding Fraud, Mismanagement and Nepotism in the European Commission (CIEFR) 1999).

the reforms had generated, was accumulated by the very top layers of management rather than going to those intended. Some good things seem to have come from the reforms but the work load was detrimental to the Commission service's other tasks. Some of the Santer reforms seem to have been quietly allowed to die, such as the Activity Based Management programme, which seems to have been good in some cases. Generally the Kinnock Reforms seem to have been negatively received by many in higher management.

Deep laid suspicions about the reforms seemed to be that: they had been rushed through to pay lip service to MS concerns; that they were an attempt to make officials normal civil servants which was resented; that they sought to allocate blame on officials lower down and to protect the top management and political layer; that they were symptoms of 'fear management' by the Prodi Commission which was more scared about suffering the same fate as the Santer one than of promoting the Commission. There was anxiety the reforms would result in the emaciation of the Commission in general. The mobility rule, requiring staff to move every five years at the latest, was seen as a dangerous move which would lead to the loss of Commission expertise and organisational memory as Heads of Unit and officials who had dominated policy areas were moved on. These fears were more grounded than they might at first appear when bearing in mind the absence of: effective (and uniform) archiving in the Commission; dossier hand over procedures; until recently training in dossier management and legislative writing; a large enough clerical layer to handle the vast amount of paper work. When these are combined with a culture which was only interested in new legislation and policy and not concerned with old policies and the related paper work, and an organisation which has attached policies to persons and positions for years, then the anxiety seems rather justified. There was a decline in expertise in the ranks of the Commission that could have a negative effect on its dealings with the MSs and other international players.

There was pessimism in the DGs about the reforms and apparently the mobility rule might not apply in practice to many dossiers as some DGs moved staff but transferred their dossiers and work with them. So on paper they had been moved and the reform implemented but in practice they were doing the same work. Apparently mobility did not have to result in staff being moved out of the DG at all; they could remain close enough to the dossier and their old position to be available to advise. Mobility could be effective, only if top management wanted it to be. Policy Networks and CMO units were weakened by use of the mobility rule. Making Heads of Unit personnel managers rather than policy experts seemed an odd reform. Some personnel support for staff is helpful, but if the structural problems remain of MSs dominating senior positions and the other factors mentioned already then good line management probably will not help. Rather an important layer will be more over burdened than ever and even less able to manage and enable their staff to be the policy makers and regulatory entrepreneurs that they have been in the 'flat organisation' to date. It seems doubtful that the policy makers that many Desk Officers are really, need a line manager. Far more they need an expert to assist them but that is something different. In general the Commission is becoming more hierarchical.

The reforms and bureaucratic controls are mostly paper controls and that these are in themselves problematic. Increasing paper work and controls in a Commission which already had a reputation for struggling with excess work and lack of management skills would be problematic at the best of times, since when combined with the tendency of hard working officials to want to get their work done, the result has been at times that shortcuts are taken. It is also a fact that the Commission has under spent often enough and that needy recipients of finances simply do not receive the finances they apply for; although payment times as a whole are sta-



ted to have decreased. The general sense the interviewer received in the interviews was of frustrated officials struggling with a system which steadily makes their work harder.

The large increase in bureaucratic tasks for most of the Commission staff and the strengthening of rules and the power of the hierarchy look good but do not seem likely to deliver the new organisation it was stated they would do; maybe they were never intended to at least not by all. After all the introduction of the Santer reforms and the beginning of the bureaucratisation process ended in the fall of his Commission. The weakness of OLAF and the EEA both of which aimed at enhancing the effectiveness and efficiency of the Commission as a whole and DG ENV have been mentioned. Both OLAF and the EEA would have helped the Commission to be held to account by enabling evaluations to be performed on it. Both were either opposed or seriously weakened. There are two ways of considering the facts, either the Commission simply did not want to be managed and resented any controls<sup>246</sup> and so Commission actions are deliberate; or they were simply a result of inability; the Commission was somewhat unmanageable. There is probably truth in both.

Leaving aside the motives of some in the College, if we consider the anti corruption measures that the Commission put into place after the 1999 fall of the Santer Commission we see that it favoured further ineffective, bureaucratically complex anti corruption measures to combat the problem of corruption, rather than effective methods. Although these would only serve to put off honest project organisers from making an application for funds in the first place. Something similar has happened with many of the other reforms that were launched within the Commission. The idea of the reforms was good but somehow they get turned on their heads rather quickly as different elements in the Commission used them to their own advantage. Mobility at times was a good idea but if the same members of staff deal with the dossier from a different desk this was hardly worthwhile. Many of the reforms seem to fit more into line with the various temporary concerns of the College than with any real intention or desire to permanently reform the Commission. First there was a decentralisation of the Commission to devolve responsibility onto the DGs and away from the College, that achieved, there now there seems to be a recentralisation taking place. What remains is a large increase in bureaucratic tasks for many of the officials seemingly to the detriment of quality. As waves of bureaucratisation have taken place before, as happened after the 1965 empty chair crisis, it seems fair to say that the cycle continues.

When considering the Commission in general, its resistance to reform has been stressed, many have been the reports made which have recommended reforms and changes but precious little occurred on the ground until the Kinnock Reforms and whilst these are having some effect there is resistance to them; 'While the Commission, as the engine of integration, has spearheaded many important policy initiatives requiring others to change, it has remained remarkably impervious to outside criticism. During the 20 years since they were made, the proposals of the Spierenburg Committee (1979) for a smaller and better coordinated Commission have provided talking points for would be reformers without prompting action.'<sup>247</sup> It is even stated to be exceptional by international standards; 'The absence of reform over such a period contrasts not only with national administrations and international bodies, but with organizations more generally, which are "characterized by gradual evolution and sudden revolution."'<sup>248</sup> The same goes for the DGs and the Policy Networks that surround them, there is a perceptible reluctance and at times resistance to any change, any rocking of the boat for a

<sup>246</sup> See note 132 Shore (2000) p. 198. '...practices of "Staff appraisal" or "performance review" accepted in the Danish, Dutch and British civil service, are "anathema" in most Mediterranean countries. For a Spaniard, the very suggestion of performance appraisal would be considered an insult.'

<sup>247</sup> See note 7 Metcalfe; (2000) p.822

<sup>248</sup> Metcalfe (2000) referred to see note 263 Kassim (2004) p.34

number of reasons. Firstly that officials want to preserve the status quo 'or at least . . . their last big achievement,' and they have 'a vested interest in blocking radical change . . . This specifically bureaucratic version of the model known as path dependency is discernible within the European Union and acts as a deterrent to change which is liable to upset established procedures.'<sup>249</sup>

A range of reasons for the failure of the reforms over and above those listed already should be run through now. First there is the problem that some countries and their officials perceive the reforms as originating from other countries in particular the UK, and feel that they are therefore alien, thus they cannot 'own' the reforms and instead resist them, the officials of a southern European origin particularly hold to this.<sup>250</sup> Any reform which reduces the policy making aspect of officials work and thus their discretion would be resisted,<sup>251</sup> and there was a broad suspicion amongst many officials that there was a process underway which might have left them as order obeying civil servants and that this would, to an extent, amount to something of a betrayal of the European ideal which required them to be political, such reforms would be resisted.<sup>252</sup> These reasons for resistance were and are important:

'A second obstacle is the perception on the part of its staff of the special nature of the Commission, the uniqueness of its mission and the idea that it and it alone represents the common European interest. Any suggestion that it might change is interpreted as a challenge to the organization's independence and a threat to the inheritance of Monnet and Schuman. In a multinational institution, moreover – particularly, one whose hybrid culture is considered an essential ingredient of its uniqueness – administration and management are culturally loaded concepts, and hence divisive.'<sup>253</sup>

Linked to this are the interdependencies and loyalties which develop in Policy Networks and the status that officials often enjoy in them. Officials who have spent a decade or so deciding how much money a certain MS or region will receive obviously will enjoy a certain status with officials from that area and the regional officials will equally appeal to the official for support and vice versa if their joint situation is threatened. This may well be particularly true if officials have been deliberately placed in their posts by MS pressure.<sup>254</sup> MSs are very conscious of their staff and where they are located in the Commission and extremely reluctant to allow them to be moved about over much which also results in reforms being resisted:

'In addition, the "geographical balance" historically applied to A1 and A2 positions, and more recently to appointments at A3 and A4, not to mention Member State support for dubious practices such as parachutage, has limited the Commission's ability to pursue an independent promotions policy based on merit. The willingness of national governments, acting through their permanent representations, to intervene in defense of their nationals has, moreover, imposed restrictions on other aspects of personnel policy.'<sup>255</sup>

The reforms have potential to be a form of 'political control' too.<sup>256</sup> The pressure to reform the Commission internally came about for a variety of reasons as stated above. There seems to be elements of both reaction and deliberate political calculation in them. Yes, the reforms were

<sup>249</sup> Stevens, A and Stevens, H. *Brussels Bureaucrats* (2001) Basingstoke, Palgrave p 245

<sup>250</sup> *ibid* p 245 and see note 263 Kassim (2004) p 37

<sup>251</sup> *ibid* p 245

<sup>252</sup> Interviews with Commission Officials: DG REGIO

<sup>253</sup> Shore (2000) p 277-8 referred to see note 263 Kassim (2004) p 36-37

<sup>254</sup> See note 249 Stevens, Stevens (1991) p 245

<sup>255</sup> See note 263 Kassim (2004) p 37

<sup>256</sup> See note 2 Kassim, Menon (2004) p 74



reacting to perceived problems within the Commission structure, but also they seem to have been decided on as a means of ensuring elite change over and conflict reduction. Some in the Commission saw the reforms as alien and Anglo Saxon in origin and seem to have sensed that they were not as neutral as they seemed to be; 'Previously legitimate and effective methods of management came to be seen as pure 'nepotism' whilst their proponent was branded a 'despot'. The rationalisation of management procedures, "programming" and "evaluation" methods became tools in the quest for a new balance between different interests and groups within the administration.<sup>257</sup> The study quoted from, broadly analyses the career of Jacques Ferrandi, who was chef de cabinet to the first Commissioner of the EDF (European Development Fund), and subsequently, Director. The ability of the effective old management to build up networks based on personal contacts and methods enabled them and the policy they ran to resist reforms.<sup>258</sup> It is argued in the article, that owing to the continuation of the old management's network much of the policy remained unreformed.<sup>259</sup> It was only after significant personnel re-organisations that the policy could be brought back under some sort of control,<sup>260</sup> but the failure to bring in more new officials limited the extent of the reform.<sup>261</sup>

Several useful lessons that can be learnt from the case study are that:

'It is argued that reforms in the structure of the institution or policies and types of public action are the means to regulate these conflicts. Any administration, national or multinational, is a "battlefield" where conflict takes place between diverse groups of senior civil servants. They seek to maintain their position, their power and access to various resources. The definition of reforms is part of this conflict for power or an attempt to control it. In that sense, it is highly political. It is all the more likely to occur in a multinational administration, for the reasons presented above.'<sup>262</sup>

Also the study refers to the Coombe's perspective and makes the connection between the loss of power of 'powerful leaders,' who were 'capable of defining and enforcing its mission,' and keeping cohesion on the basis of 'mutual trust and shared beliefs' and the outbreak of:

' . . . the competition which was soon to appear between leaders bearing different interests and norms. This competition (facilitated by the multinational character of the institution) and the multiplicity of the Commission's tasks were to lead to its gradual bureaucratisation . . . in order to ensure impartiality, neutrality, and balance between the various competing "clans" and leaders.'<sup>263</sup>

The current reforms are stated to be 'exacerbating conflicts of interest and norms within the Commission . . . '<sup>264</sup> Implicitly the author stresses that the 'reforms' serve the British interest and help to remedy their complaint about not enough influence and are in practical terms likely to introduce more 'red tape' which they are supposed to be removing.<sup>265</sup> The likelihood is that the reforms will spark off even more bureaucratisation.

<sup>257</sup> See note 2 Kassim; Menon (2004 p.76

<sup>258</sup> *ibid* p.81

<sup>259</sup> *ibid* p.81

<sup>260</sup> *ibid* p.80

<sup>261</sup> *ibid* p.82

<sup>262</sup> *ibid* p.75

<sup>263</sup> *ibid* p.82

<sup>264</sup> *ibid* p.83

<sup>265</sup> *ibid* p.83

The French policy makers at the heart of the network described, were able to oppose aims more widely held within the Commission and MSs.<sup>266</sup> The possession of wide networks in other countries, as well as in the DG, seems to have resulted in power in the DG and enough power to 'disturb' the French Government.<sup>267</sup> Finally such was Ferrandi's power that he stated 'I have never had so much power to dispose of public money. DG VIII was the EDF, and I was the EDF.'<sup>268</sup> In summary, the study shows reforms as serving political purposes for one group whose influence is on the up, and also reflecting the attempt of the organisation to contain the outbreak of competition and conflict following a change in leadership and also an enlargement and in preparation for another.<sup>269</sup> Whilst, this case study was primarily about reforms in the Commission, the similarities between several of the features of the DG listed and those of the DGs listed in the findings of the thesis will be readily apparent and provide some more support for the findings of my own interviews.

A bureaucratic corset, appropriate maybe for an old fashioned national ministry, was being placed around officials who were not issuing unemployment benefit in a predictable and routine manner but rather drawing up European wide legislation. That the quality of projects and legislation deteriorated as the staff drawing it up were unable to focus on it owing to the excess bureaucracy should not be a surprise. Although it is ironic that the organisation supposedly creating most red tape was struggling to function because of it. Commission staff are highly trained expert policy makers, regulatory entrepreneurs who respond quickly to the needs and possibilities of the environment in which they work. They were, though, being ever more closely constrained by an inappropriate bureaucracy to the point that their work was being negatively affected. Overall the last five years saw a centralization process occurring in the Commission and in individual DGs accompanied by a plethora of controls; some DGs have seen well over a hundred auditors and personnel staff added to their staff lists and one official stated he had maybe one check every so often before, and now he has over five teams of auditors checking up on him.<sup>270</sup> Attempting to control staff via more procedures brought lower management to a point where it was in danger of collapse.

To conclude the section on reforms it is worth restating the two salient facts, firstly that the Commission or rather elements in it resent and resist the reforms, and secondly that the reforms do not appear to be as neutral and objective as they might like to seem. This is not to deny that there are 'problems' in the organisation of the Commission but that the reforms as implemented are not the solution and rather duck the real issues, a point which other authors also stress, although they suggest different remedies.<sup>271</sup> The Commission is too contradictory internally and politically charged to be reformed from within, without politics playing a major role. It is part of a contradictory external governmental environment which is equally politically motivated. There are so many vested interests involved than any change to the EU or the Commission which does not represent a total overhaul of both will result in a politically motivated game of strategy and compromise.

The reforms seem to be little more than another phase in the cycle of the Commission varying between emphasising its role as: a policy manager; a policy maker; a civil service bureaucracy; a proto federal government top level executive. In its dynamic phases the Commission

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<sup>266</sup> Dimier, V *Administrative Reform as Political Control Lessons from DG VIII, 1958-75* in Dimitrakopoulos, D. (ed) *The Changing European Commission*. (2004) Manchester, Manchester University Press

p.80. 'This is why he opposed the extension of the EEC's development policy to the British Commonwealth.'

<sup>267</sup> *ibid* p.78

<sup>268</sup> *ibid* p.78 Interview with Jacques Ferrandi, 26 August 1999, Porto Vechio)

<sup>269</sup> *ibid* p.84

<sup>270</sup> Interviews with Commission Officials: DG ENT

<sup>271</sup> See note 7 Metcalfe; (2000) p.825



has lots of loose network structures and personal contacts, and the staff are highly motivated and cohesive, it behaves like a policy maker and federal executive. Then the opposite swings into effect, the networks are shorn back by reforms aimed at 'efficiency and effectiveness,' and this seems to be deliberate and politically motivated by those who see in the standard civil service model for the organisation, an improvement of their hand and who emphasise the managerial aspects. That the reforms are accepted by more than just a few in the Commission reflects that there is a positive effect which is that MS intervention, via their internal networks, is also reduced by the reforms. The timing of the reforms is important as the problems they claim to solve are constantly present and the reforms and bureaucratisation comes in waves. The resistance to the reforms is also a politically motivated act to support the network dynamic model of the Commission, with its federal implications which often and rightly sees changes to this as not entirely neutral. It is also resistance to a change in the status quo and perceived right way of doing things and vested interests attached. Organically there seems to be an underlying trend with the shift in balance between the elites. There seems to be a cycle of 'over effective' networks in an 'over effective' and political Commission resulting in a change in the equilibrium internally and externally, which at some point reverses as the losers strike back, using weapons that finally limit their advance as well. As will be described more later the use of bureaucratic rigidity as a means of the Commission protecting itself from external influence seems to have been an organic defence mechanism.

## 9.6 ENLARGEMENT AND THE COMMISSION

We have seen the main trends in the recent history of the EU and Commission. Inevitably these will have had an effect on the enlargement as well as the enlargement exacerbating them. We will now move on to consider the negative effects that the problematic state of the EU and the Commission had on the enlargement. Having completed this and so accrued a large body of information on the recent state of the EU and Commission, above all including detailed case studies backed up by broader observable trends we will return to a more purely theoretical perspective. With the help of Mintzberg and Hofstede we will gain some more analytical insights into the organization that is at the centre of the immunization process, the Commission.

The findings indicated in the chapters on the various DGs and the summary earlier in this chapter are pretty clear. The various DGs have been seen to have behaved in a fairly mixed manner towards the NMSs. Usually the internal problems of the various DGs which were mentioned by their officials were mirrored in the complaints made by the NMSs. They obviously, as outsiders dependent on the DGs, were all too aware of the inefficiencies and disorganisation which existed. Only one DG, DG ENV, came out pretty positively and that is presumably in part owing to the environmental ministries in the NMSs, which were traditionally weak, being grateful for the kudos they received from association with the big brother in Brussels. The many following comments are based on the interviews, mentioned before, carried out with NMS officials.

The enlargement 'successfully' took place within the Commission organisation but at a cost in terms of delays, confusion and the inevitable frustration and disillusionment expressed by several of the NMS officials interviewed. Much of this could have been avoided, as it occurred owing to the Commission's inability to organise its considerable resources better. The combination of Commission reform and reform of some of the key policies with the enlargement was intended to facilitate both reform and enlargement but maybe delayed the process considerably. An organisation as confused and introspective as the Commission had become

was hardly free to dynamically concentrate on the enlargement. Some of the internal reforms could have waited for the enlargement to be completed.

The ability of DGs, or elements of them, and Policy Networks linking them with sectors to allegedly fight reforms and any reorganization, drew the NMSs into major struggles which they should have been kept out of. The CAP reforms were necessary and no doubt for the Commissioner concerned and the reformers the enlargement was a useful argument to back up their case for the urgency of reform. But it also meant that those resisting reforms were, as a result, likely to resist the enlargement as well as the reforms, and to see the two as inseparable. There seems to be enough indication that the NMSs did not benefit from this combination, at least not for the majority of the enlargement process. The same can be said for the cohesion policy which saw the NMSs drawn into the struggle for reform of the policy. The NMSs were seemingly negatively targeted by some of the new procedures used when paying the funds. DG ENT and its weakness owing to the 2000 reorganization was seemingly unhelpful for the enlargement. It might have been better to have been postponed the reorganization as the NMSs had to struggle with some of the results. With DG ENV the costs of some of the environmental legislation passed was and will be considerable; the role of networks in the promotion of this environmental legislation is arguable but the resultant economic costs are clear.<sup>272</sup> More seemingly political leadership by the Commission and better organized DGs could have worked out better legislation and conditions for the enlargement.

The vulnerability of the enlargement process and the NMSs to the power of the sectors in the EU was shown by the Europe Agreements (EA) which, whilst they occurred at the beginning of the 1990s did set the tone for the future to an extent. Whilst the problem surrounding the EAs has been mentioned it is useful to consider this in more detail. The next three quotations make the problems the NMSs faced very clear:

‘Within most member governments the foreign ministry was competing with ministries for industry and agriculture that were subjected to pressures from sectoral producer lobbies. The ability of the sectoral logic to constrain a more politically motivated agreement was greatly facilitated by the fragmentation of the policy process, and the lack of close oversight by the macro-policy-makers in the member governments. Defensive sectoral interests were able to insulate specific aspects of the EAs from political pressures for a more generous approach to the CEECs and to set the baseline of what would be on offer. As some of those involved on the CEEC side were able to observe, as fast as they identified issues on which they wanted to press for more open market access, they found that an EU based lobby had beaten them to the EU negotiators.’<sup>273</sup>

‘Fragmentation of the policy process at the level of detail made it easier for the meso-policy makers to insulate some of the substantive policy issues from broader political objectives and to prevent more far reaching moves to accommodate the concerns of the CEECs.’<sup>274</sup>

‘However, the forces of divergence and fragmentation have also been present, especially when grand policy had to be turned into detailed implementation and on more technical issues. Hence for example, the use of commercial defence instruments has persisted, and periodically the EU has taken inflexible positions on the adjustments that the CEECs needed to

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<sup>272</sup> See note 6 Mazey, Richardson (1997) p.184.’

<sup>273</sup> Sedelmeier, U and Wallace, H. *Eastern Enlargement in process* in (eds) Wallace, H and Wallace, W. *Policy Making in the European Union* fourth edition (2000) Oxford, Oxford University Press p.439

<sup>274</sup> *ibid* p.457



make to be allowed to develop their relationships with the EU. Thus we can also find plenty of evidence of incoherence and dysfunctionalities at the level of detailed policy delivery'.<sup>275</sup>

Furthermore, projects which should have been performed for the benefit of the NMSs were often delayed and finally underspent. The lessons which the NMSs made of their interactions with the EU and the Commission in particular were, seemingly, of a bureaucratic monolith which was hard to move and often issued contradictory instructions and itself took ages to reach decisions. The lack of DG coordination and cooperation was hardly the picture that the EU wanted to present to the less than perfectly organized ministries in the NMSs. It would have been useful had the Commission provided the effectiveness and efficiency that would have made up for the deficits in the NMSs. At times this occurred, and NMS officials compared the Commission favourably to their own, but all too often this does not seem to have been the case. In certain fields like Regional Affairs the DG seems to have been problematic towards the NMSs even creating extra problematic rules and regulations where they were not legally required. Arguably the pressure that was applied to the NMSs to improve their 'administrative capacity' was geared to really make up for the DGs own weaknesses in that department that the DG itself was all too aware of. Either way the image the NMSs had, seemed to be of an imperfect instructor who followed the old adage of 'do as I say not as I do'.

The state of NMS ministries and their permanent representatives in Brussels is salutary. In most of these states the hurried growth of the private economy was accompanied by a running down of the ministries, resulting in badly paid staff. Many talented experts have allegedly left the civil services for the private sector. There was said to be a split between an older generation of experts who spoke the national language and the younger generation who lacked expertise but spoke English. The older generation were said to be less positively oriented to the EU and more suspicious of it and to dislike the time it took to work with it. The role of the politicians in the NMS civil servants was alleged to be too great and political penetration into the ministries considerable. Some states like the Czech Republic had yet to pass the required laws to reform their civil services. There seemed to be a problem of coordination and cooperation between both ministries, and ministries and their associated permanent representatives in Brussels. Often the latter said that they failed to receive instructions from their ministries on how to vote in the Council meetings and so either abstained or voted as they guessed they should. They said that the seeming ease with which the Council was functioning, despite concerns expressed early in the enlargement process, was partly due to: the lack of confidence of the NMSs; the lack of proper routines and forms of communication and coordination between them and their national ministries, and so a lack of the required sectoral expertise. On the whole the situation of national ministries seemed to be rather grave with the few individuals who combined expertise with language skills being snapped up by Brussels or private industry. Thus, given such weaknesses the Commission and EU needed to be more united and coherent than ever.

The effect of the various stages of the Commission vaccination 'pathological' cycle on the enlargement seem clear enough. The lack of political leadership following the Delors period and the subsequent bureaucratic clampdown had a negative effect on the enlargement process. The process also added to the extremes of the cycle and helped make Commission problems visible. All too often the Commission showed a lack of independence from national issues combined with a decline in efficiency. It also seemed to have lost the ability to protect small states and instead put the ball back into the Council large - MS - dominated sphere which was regrettable.

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<sup>275</sup> see note 273 Sedelmeier, U and Wallace (2000) p.457

## 9.7 A MINTZBERG – HOFSTEDE DIAGNOSIS OF THE COMMISSION

We have seen the fragmentary effects of the Commission and its current state of fragmentation and weakness on the EU. These effects coupled with those linked to the MSs' response to its dynamism are 'pathological' and not helpful to the EU at least from a DP perspective. The Commission's behaviour and the MSs is logical if their organisational survival and goals are taken into consideration. But if there is more at stake than the Commission fulfilling its goal of being at the heart of a federal government or the MSs' goal of preventing this happening then 'pathological' is the word to be used. Since warfare is no longer a real likelihood in Western Europe and Communism is pretty much a spent force, the need for the vaccination is less urgent now than in the past. From a Macroparasitism perspective is the cost of the extra layer of civilisation and government entailed by the EU bearable in the longer term, or does it need to be trimmed back as the dangers it was protecting from recede. Has the inoculation been successful enough and the MSs are more than capable of cooperating without the Commission and Monnet Method in its current form? The costs of a continuation of the current EU system with its MS – Commission antagonism are maybe simply too great now. What is at stake is DP; large amounts of tax payer's money and economic prosperity. It is also arguable if the economies of the EU can really support the extra layer of government and the legislation that it generates. The proof of this being shown in the attempts to forcibly stop the generation of more legislation from within the Commission by the Commission itself, and the drive to reduce that which is already there. The excessive executive activity of recent times has evidently led to a vast accumulation of technically correct legislation which is detrimental to business and thus citizens as was seen in the chapter on DG ENT. But more on the rise of the executive later, first let us allow Mintzberg's organizational theory to shed light on the Commission to see just how 'pathological' it is from an organizational theory point of view.

### 9.7.1 MINTZBERG ON THE COMMISSION

The theoretical 'pathological' effects of the Commission have been discussed, the word theoretical is stressed once again as 'pathology' is defined as deviation from the theoretical ideal forms and norms traditionally held to. Logically, theoretical 'pathological' effects as have been seen in the EU should proceed from a theoretically 'pathological' organisation structure. In a sense all the 'original' EU institutions took the form they did owing to the non-democratic technocratic structure of the High Authority – Commission. To establish the sheer extent of the oddity of the Commission from a theoretical perspective and to show it is a 'pathological' version of an organisation, Mintzberg's organisational theory will be applied now. The theory offers a range of organisational models and describes their attributes; the Commission fits into all the different models. To be a hybrid is not exceptional and half of the organisations reviewed by him were hybrids and were maybe a cross of maybe two of the five models. The Commission however seems more hybrid than the lot.

For a start it is a blatantly political organisation in itself, with the additional problem that other political organisations, the MSs, are active in its structure too. MS political influence is found via appointees and MS networks. The College and the 'services' down to Directors and even sometimes Heads of Unit and Desk Officer level, are political appointments and whilst avowing to be independent also show loyalties to their MSs. Not only that, but the Commission is divided internally into politically empowered officials and groups often of a specific national origins with their own agendas. The result seems to be Policy Networks which combine: Commission, MS, Interest group and Policy Network concerns which often have a dis-



tinctly political content. Whilst this is not directly relevant from a Mintzberg perspective it is important to re-state some of the points about the Commission. So to sum up, the Commission is a complex and divided political organization which is also an administration. Now onto the Mintzberg models.

The definition of the 'professional organisation' given by Mintzberg applies to Commission staff. When the detailed legislative work of the Commission staff is considered and their back grounds predominantly in law and economics then the term professional seems appropriate. The Mintzberg definitions follow:

'Most important, the professional organisation relies for coordination on the standardization of skills, which is achieved primarily through formal training. It hires duly trained specialists - professionals - for the operating core, then gives them considerable control over their own work. Control over their work means that professionals work relatively independently of their colleagues but closely with the clients they serve, doctors treating their own patients and accountants who maintain personal contact with the companies they audit.'<sup>276</sup> And; 'But no matter how standardized the knowledge and skills, their complexity ensures that considerable discretion remains in their application. No two professionals, no two surgeons or engineers or social workers ever apply them in exactly the same way. Many judgements are required.'<sup>277</sup>

Commission officials running a dossier are quickly the experts in that area, more so than almost anyone else. They alone have all the experts to hand, in all the MSs, and know all the facts that go into making the European dimension of that particular piece of legislation or policy. Traditionally the Commission has allowed them great leeway and much of the official's work will involve legislation. Heads of Unit served the role of guidance and possessors of expert knowledge through long years of experience; they assisted the officials rather than managed them. Thus in practice officials held great responsibility and work alone with their European wide dossier network a lot of the time. The competition for selection into the ranks of the Commission, ensures that individuals of the very highest calibre are recruited. It is debatable whether the officials enter the organisation as professionals in the fullest sense though as they are not as independent as the theory seems to indicate. The organizational imperative for the smooth functioning of such staff is that the structure should be ' . . . bureaucratic without being centralized . . . the skills of those professionals can be perfected through standardized operating programs.'<sup>278</sup> These are stated to commonly be in ' . . . hospitals, universities and accounting firms. The professionals need to have a minimum of 'technostructure and middle-line management.'<sup>279</sup> The informal staff structure of the Commission contains most of these aspects; Heads of Unit and Desk Officers working alongside each other, or independently of one another.

Yet the formal structure of the Commission is highly bureaucratic and rigid, plagued by slow cumbersome bureaucratic procedures which are antiquated. The machine bureaucracy in Mintzberg has the following characteristics:

' . . . highly specialised, routine operating tasks; very formalized communication throughout the organisation; large-size operating units; reliance on the functional basis for grouping tasks; relatively centralized power for decision making; and an elaborate administrative structure with a sharp distinction between line and staff.'<sup>280</sup>

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<sup>276</sup> See note 235 Mintzberg (1989) p.175

<sup>277</sup> *ibid*

<sup>278</sup> *ibid* p.174

<sup>279</sup> *ibid* p. 177

<sup>280</sup> *ibid* p. 133

A glance at the Commission reveals that the ‘very formalized communication,’ aspect of the Mintzberg model is certainly present. The large units and highly specialised routine operating tasks cannot, in practice, be found in the Commission. The staff are not making cars with one set action to perform; they have to perform a wide range of actions. Decision making is made in the final sense by the top hierarchy and Commissioner, but in practice much of the work and decisions are made lower down by the policy making staff, and management plans are later modified around what the staff have actually done rather than the other way round. In terms of the sharp distinction between staff, it is a question of defining what this distinction consists of. In terms of work done and discretion in the generation of legislation Heads of Unit and Desk Officers have often done the same work. Directors are politically active and seen to be there to defend the DG and staff and to represent them with the other DGs. They also have the role of accepting the legislation generated by their staff or not. But with regard to this last point often it is a question of Directors accepting legislation and not deciding what is done in the DG as such. Whilst the ‘machine bureaucracy’ model states that ‘the necessary knowledge is often at the bottom;’<sup>281</sup> the work which is performed by officials seems more than just this. Even the phrase ‘implementers formulate . . . people who are naturally in touch with the specific situations at hand take individual actions . . .’<sup>282</sup> still cannot account for detailed policy making which is done by lower level officials. The ‘control mentality’ does seem to pervade the ethos behind the bureaucratic structure of the Commission and there were signs of it being strengthened. In a ‘machine bureaucracy’ there is supposed to be power and knowledge at the top of the organisation; in the Commission, power is or was distributed more throughout the grades and knowledge held by the lower ranks, from Heads of Unit downwards. Besides this, a lot of basic mechanisms for the hierarchy to hold their own were missing in the Commission whatever the formal structure. Informally, recruitment and promotion were intransparent and often owed more to national networks than anything else.<sup>283</sup> Staff were and are, frequently able to circumvent the hierarchy as they are often the de facto boss of the dossier and are at the centre of Policy Networks which involve MS officials, MEPs other DGs and powerful interest groups. Pressure can be ‘mobilised’ from outside the Commission to make the hierarchy decide in a certain manner.

The ‘machine bureaucracy model’ expects divisions according to functions like marketing managers from manufacturing managers and these divisions are created by them, each division ‘. . . must mirror the narrow specialization of its operating core in its administrative structure . . .’ each unit becomes jealous of its own prerogatives and finds ways to protect itself against the pressure encroachments of others.”<sup>284</sup> The problems within DGs between the horizontal units and departments and their unwillingness to transfer staff fit with this description. The moves by Prodi to make the Commission more ‘machine bureaucracy’- like and closed, fit with the defensive mentality just mentioned but on a bigger scale combined with the notion of making the organisation more immune to external influence, in particular the MSs and Policy Networks and so to revitalise it, which Mintzberg also describes.<sup>285</sup> Machine bureaucracy is therefore a useful tool to achieve several ends. The actions of Prodi also fit with the following observations:

‘But if mutual adjustment does not work in the administrative centre - generating more political heat than cooperative light - how does the machine organisation resolve its coordination problems? Instinctively, it tries standardization, for example, by tightening job descriptions or

<sup>281</sup> See note 235 Mintzberg (1989) p.148

<sup>282</sup> *ibid* p.150

<sup>283</sup> See note 4 Spence, (1997) p.77.

<sup>284</sup> See note 235 Mintzberg (1989) p.143

<sup>285</sup> *ibid* p. 287, 297



proliferating rules. But standardization is not suited to handling the nonroutine problems of the administrative centre. Indeed it only aggravates them, undermining the influence of the line managers and increasing the conflict. So to reconcile these coordination problems, the machine organisation is left with only one coordinating mechanism, direct supervision from above. Specifically, non-routine coordination problems between units are “bumped” up the line hierarchy until they reach a common level of supervision, often at the top of the structure. The result can be excessive centralization of power . . . <sup>286</sup>

The Commission has allegedly experienced an increased centralisation of power internally and micro management by higher management usually the Director General level. Much of this possibly done in obedience to the College’s requirements in order to reduce MS influence and to try and coordinate the Commission better, but also probably to increase the power of the Director Generals over their DGs. In addition, the vast increase in bureaucratic procedures and requirements absorbed increasing amounts of time that Heads of Unit and Desk Officers would have normally used generating legislation and running projects. Thus ‘machine bureaucracy’ tasks were substituted for policy making ones, as the Commission reverted to a more ‘machine bureaucracy’ form.

Often, the Commission as a whole has been run like an entrepreneurial organisation as defined by Mintzberg and also units and staff within it have behaved in this manner. The key element in this organisation is a chief executive; ‘Power focuses on the chief executive, who exercises it personally. Formal controls are discouraged as a threat to that person’s authority, as are pockets of expertise. . . .’<sup>287</sup> The leadership is ‘sometimes charismatic, autocratic,’<sup>288</sup> and there should be among other things a sense of mission; ‘decision making is likewise flexible, with a highly centralized power system allowing for rapid response. The creation of strategy is, of course, the responsibility of the chief executive, the process tending to be highly intuitive, often oriented to the aggressive search for opportunities.’<sup>289</sup> The Delors period and the Hallstein one before fall into this category with the Commission or elements of it functioning around the wishes of the President. Delors, as the model states, was not a fan of formal controls which are expected to be ‘discouraged as a threat to that person’s authority.’<sup>290</sup> Delors found much of the formal bureaucratic structure of the Commission frustrating and slow and via cabinets and informally created direct communication between himself, his cabinet and desk offices, got things done but circumvented the rest of the structure.<sup>291</sup> Mintzberg’s definition is similar to what Delors did:

‘when a chief executive . . . avoids or destroys the formalization of activity as an infringement on his or her right to rule by fiat, then an autocratic form of the entrepreneurial organization will tend to appear . . . The structure thus becomes effectively (if not formally) simple, as the normal powers of existing groups—whether staff analysts, line managers, or professional operators, etc . . . with their perhaps more standardized form of control—are suspended to allow the chief to impose a new integrated vision through his or her personalized control.’<sup>292</sup>

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<sup>286</sup> See note 235 Mintzberg (1989) p. 143

<sup>287</sup> *ibid* p. 117

<sup>288</sup> *ibid* p. 119

<sup>289</sup> *ibid* p. 118

<sup>290</sup> *ibid* p. 117

<sup>291</sup> See note 244 Spence (1997) p. 116 ‘Delors’ response to these shortcomings was to try and circumvent the bureaucracy by adopting a very direct style of leadership rather than attempt to reform and strengthen the organisation and management of the Commission.’

<sup>292</sup> See note 235 Mintzberg (1989) p. 120

One official stated that Delors ‘broke the frame,’<sup>293</sup> meaning that he made Directors and even some Heads of Unit more politically acceptable to himself and so ducked around the presence of experts who defied him.<sup>294</sup> Leaders like this are, according to Mintzberg, said to arise in certain conditions and to fall later:

‘. . . an organization . . . faces severe crisis . . . The leader may . . . attempt to effect an operating turnaround, or else re-conceive the basic product and service orientation, to achieve strategic turnaround. Of course, once the turnaround is realized, the organization may revert to its traditional operations and, in the bargain, spew out its entrepreneurial leader now viewed as an impediment to its smooth functioning.’<sup>295</sup>

Something similar happened with Delors who helped turn the fortunes of the EU and Commission around, but towards the end of his period in office saw MSs wanting less of his leadership style. However it was the MSs that got rid of Delors and Hallstein and not the organisation itself. The Commission, or elements of it in direct contact with the President and his cabinet, often form an entrepreneurial organization which exists side by side with the ‘machine bureaucracy’ formal structure.

The use of small groups with an effectively ‘adhocracy’ method of management fits in with yet another Mintzberg model, the ‘innovative organisation.’ The definition runs as follows:

‘Fluid, organic selectively decentralized . . . functional experts deployed in multidisciplinary teams of staff, operators and managers to carry out innovative projects . . . coordination by mutual adjustment, encouraged by liaison personnel, integrating managers and matrix structure.’<sup>296</sup>

This model is useful in the context of ‘temporary and mammoth projects.’<sup>297</sup> In the Commission, the use of cabinets and small and often secretive working groups to achieve reforms to policies is common. The bigger the reform the smaller and more exclusive the group involved. Something similar happens in the direction of the respective DGs which reflects a general perception that seems to exist higher up the Commission that the ‘services’ are unresponsive, large and cumbersome as a whole and the solution is to create small groups to circumvent it and so get things done. As even Cabinets were in general use, although unfortunately allegedly dominated by MS appointments (so called ‘little Councils’), the use of other working groups selected by the top ranks made sense; the organization was used to this method of doing business. Commission units, often of a multi disciplinary nature, were regularly set up to achieve specific ends, like the enlargement units which were active in promoting the enlargement process in their respective DGs. In some ways the statement that the staff in an ‘adhocracy’ need to be trained and given special skills on top of those they join the organisation, with seems to fit Commission staff. Indeed when the sheer number of DGs which have been started from being a single unit created to serve a specific a market need and then developed into a DG are considered and the opportunist (positively meant) and innovative manner in which officials act within their highly complex institutional environment, then this model seems quite appropriate. Power in an ‘adhocracy’ is said to be:

‘. . . highly decentralised . . . That means that power over its decisions and actions is distributed to various places and at various levels according to the needs of the particular issue. In

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<sup>293</sup> Interviews with Commission Officials; DG REGIO

<sup>294</sup> *ibid*

<sup>295</sup> See note 235 Mintzberg (1989) p. 120-121

<sup>296</sup> *ibid* p.198

<sup>297</sup> *ibid* p.198



effect, power flows to wherever the relevant expertise happens to reside-among managers or specialists (or teams of those) in the line structure, the staff units and the operating core.<sup>298</sup>

Certainly the informal power structure of the Commission with the individual members of staff running policy dossiers and units being given a free hand to run the enlargement business for the DG, show a degree of decentralised power which is like this. The Mintzberg definition continues; 'the need for traditional direct supervision is diminished, so managers derive their influence more from their expertise and interpersonal skills than from formal position. And that means the distinction between line and staff blurs.'<sup>299</sup> The relationship between Heads of Unit and staff certainly was like this traditionally in the Commission. The role of the top management seems to be similar too, as their main tasks are to liaise with the external environment and to ensure that more projects are forthcoming, and so keep the organisation in existence and also to manage the 'fluid working arrangements with power based on expertise, not authority.'<sup>300</sup> The Directors also have to monitor the project work done to ensure that it is done on time. DGs are alleged to have to generate legislation to justify their existence; their success was in the past measured on the quantity and quality of the legislation produced. Thus DGs and their staff are, in a sense, on the look out for more work and more possibilities to create new legislation as this is valued most highly in the Commission. The top management are alleged to represent the DG and to select from the proposals generated by the staff, those that fit with their interests and perception of the DG's needs and profile and to make sure that it is promoted and gets the necessary resources. The 'adhocracy' model is stated to be found in 'environments that are both dynamic and complex. A dynamic environment, being unpredictable, calls for organic structure; a complex one calls for decentralised structure. This configuration is the only type that provides both.'<sup>301</sup> The European policy making environment is usually both dynamic and complex with ever increasing numbers of actors and procedures. What is particularly interesting in Mintzberg's description of the innovative organization is that:

'Although it is ideally suited for the one-of-a-kind project it, the innovative configuration is not competent at doing ordinary things. It is designed for the extraordinary. The bureaucracies are all mass producers; they gain efficiency through standardization. The adhocracy is a custom producer, unable to standardize and so be efficient. It gains effectiveness (innovation) at the price of efficiency.'<sup>302</sup>

Much of the work done by officials is very much one off; a piece of legislation or policy designed to fit the specific problem needs detailed by the MS official or stakeholder involved, or as also happens frequently, officials see an opportunity to create a piece of legislation to deal with a disaster for example. Each piece of legislation will be likely to affect different groups and institutional actors who will maybe require additions and exemptions, in clause form and wording, to be made. Standardizing policy making work, can only be done very carefully and require maybe that certain groups be included, or that staff receive training in writing watertight legal texts otherwise it will make the process inflexible. Managers are stated to be prime movers towards more rules in the organization but staff get fed up. The following Mintzberg definition matches the reality in the Commission; ' . . . confusion as to who their boss is, whom to impress to get promoted; a lack of clarity in job definitions, authority relationships, and lines of communication; and intense competition for resources, recognition and re-

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<sup>298</sup> See note 235 Mintzberg (1989) p. 200-201

<sup>299</sup> *ibid* p.205

<sup>300</sup> *ibid* p.206

<sup>301</sup> *ibid* p.207

<sup>302</sup> *ibid* p.216

wards.<sup>303</sup> Within the Commission's informal staff structure, officials in politically important units enjoy special relationships to the Commissioner and cabinet which worries and annoys the hierarchy which feel circumvented. Staff can use the many institutional actors available to do the same. Where promotion is concerned, traditionally this has been a very opaque process and staff are utterly unsure about who to impress, the standard methods of promotion certainly did not seem to apply. Under the current system the MS networks which can influence promotions remain, and the Director Generals, as well as the Heads of Unit have a say in promotion; staff find the system unpredictable. Job definitions have been lacking in the Commission leading to the request given to staff a couple of years ago that they should write out a job description to give to the management;<sup>304</sup> it should go in the reverse direction. Problems of communication are evidently problematic and authority relationships difficult when some have 'feudal rights' over their positions and some Heads of Unit share the same grade as others of the staff they assess. One of the dangers of the model, is that its inefficiency can annoy staff and staff get annoyed at the ambiguities. Certainly some of this occurred in the Commission.

The 'diversified organisation' model can also be found in the Commission the definition of divisions; 'divisions are created to serve distinct markets and are given control over the operations and functions necessary to do so.'<sup>305</sup> The need of the Commission to serve specific sectors and their actors required the creation of DGs which serve these segments and are attuned to their special needs. The model requires that the divisions and their managers be 'responsible for the performance of their divisions, they must have considerable autonomy. . . .'<sup>306</sup> It also requires that there is a headquarters which ' . . . develops the overall "corporate strategy" . . . and coordinates down divisions in order to change its portfolio.'<sup>307</sup> The headquarters also provides services like a public relations office and legal counsel and is in control of finances as a whole. Certainly the Commission has a legal service, financial control as a whole and public relations officers. The Secretariat General attempts to coordinate the DGs and ensure some performance criteria are met. Whilst it used to be strong; it has allegedly weakened but is now asserting itself. It also closes down, merges and creates DGs. The stronger the headquarters the model, the more 'machine bureaucracy' structured the divisions will be. The move towards recentralizing the Commission taken under Prodi have seen bureaucratic control extended at every level. The fates of DG ENV and DG SME are relevant as both fell foul of the Commission's desire to standardise itself; the former has become significantly less ecological than it used to be and the latter was disbanded and absorbed in a big industry dominated by the Commission. Both the markets served by the DGs, the environmental and the SMEs have complained about the unresponsiveness of the Commission to their needs. Quite apart from this the standardization of staff within the DGs to meet certain procedural requirements and to achieve performance targets which bear little relationship to a policy maker's work, letters answered within a given time frame, or the number of telephone calls made, are problematic.

The last model that the Commission certainly has had traces of over time, is that of the 'stationary organisation'. The key element of such an organization is an ideology which is effective at shielding the organisation from external pressures and unites it at the same time. The European ideology which motivated the founders of the Community and Monnet in particular and the following generations of officials fits the bill well.<sup>308</sup> Unsurprisingly the entrepreneurial organisation fits reasonably closely with, or even complements the mission of the Commission.

<sup>303</sup> See note 235 Mintzberg (1989) p. 218

<sup>304</sup> Interviews with Commission Officials: DG AGRI

<sup>305</sup> See note 235 Mintzberg (1989) p. 155

<sup>306</sup> *ibid* p.156

<sup>307</sup> *ibid* p.157

<sup>308</sup> Hallstein 1972 referred to See note 4 Spence, (1997) p71.



one.<sup>309</sup> The problem is that this type of organization is supposed to operate on a minimum of rules and regulations, but this is not the case with the Commission. Although what is interesting is that as the ideological force and motivation of staff decreased, so the amount of rules and procedures seems to have increased dramatically, although it is hard to say which came first. Many within the Commission seem to be motivated by the European ideal and seek to promote it where possible; 'The machine organisation buys the workers attention through imposed rules; the missionary organization captures the members hearts through shared values.'<sup>310</sup> What the model stresses is that ideology and formalized rules do not go well together and that 'fledgling ideologies' can experience 'formal rules imposed down a centralized hierarchy of authority' as destructive.<sup>311</sup> For the 'diversified organisation' the missions of the various divisions or in the Commission the sectors compete with the ideology. Whilst this seems to be the case at times in the Commission with sector loyalties replacing those towards the more abstract European project, the two ideologies do seem to be potentially combinable as one is abstract and maybe wants to promote a European dimension which can be added to wanting to support a sector; but the European ideology has to be dominant. The two organization models have the problem that officials consider themselves experts and specialists more than linked to an ideology, however in the Commission this does not seem to be the case as the specialists are part of a system whose mission and goals many believe in rather than free lancing professionals simply brought together for a project.

The role of ideology, defined as follows, is useful in closing off an organisation; ' . . . an ideology is taken to mean a rich system of values and beliefs about an organisation, shared by its members, that distinguishes it from other organisations . . . the key feature of such an ideology is its unifying power: it ties the individual to the organisation, generating an "esprit de corps" a "sense of mission" in effect, an integration of individual and organisation goals that can produce synergy.'<sup>312</sup>

When an environment becomes hostile and or when external actors or sponsors start trying to influence the organisation maybe by motivating groups within it, then the organization may adopt rigid 'machine bureaucracy' rules and procedures to effectively close it off from external interference<sup>313</sup> and so restore some sense of unity and control to and over its internal conflicts.<sup>314</sup> Or it can use ideology maybe via a charismatic leader.<sup>315</sup> Both can seal the organization off from external influence. The latter method pulled the Commission out of the Euro-sclerosis period of the 1970s and early eighties and turned it back into a fairly united driving force with a sense of mission that essentially drove the MSs back. The 'machine bureaucracy' method then followed as MSs pressed back again; the ideologically dominated organisation becoming machine bureaucratic.<sup>316</sup> The cycle was briefly mentioned earlier, the Commission attempts to seal itself off from 'external control.'<sup>317</sup> The Prodi Commission seemed to have wanted to combine all the above to restore order, diminish MS influence and prepare the Commission for a new burst of action. But there was neither enough of a new mission to rejuvenate the ideology, nor enough of a charismatic leader. The initial use of greater bureaucratic rules had the effect of diminishing the ideological motivation of the staff even further. The MSs and maybe Europe as a whole, benefited from the less dynamic Commission, particularly considering the pressures on the Union, but greater ideological motivation and idealism

<sup>309</sup> See note 235 Mintzberg (1989) p. 272

<sup>310</sup> *ibid* p.228

<sup>311</sup> *ibid* p.234

<sup>312</sup> *ibid* p.224

<sup>313</sup> *ibid* p.109

<sup>314</sup> *ibid* p.136

<sup>315</sup> *ibid* p.223, 225

<sup>316</sup> *ibid* p. 294

<sup>317</sup> *ibid* p.139

would have eased the enlargement process which seems to have disintegrated into a melee over technocratic details and miserly payments with each MS fighting for itself. Whilst MSs have fought for their rights at every enlargement this has been more the case this time than before and the Union has rarely seemed less than the sum of its parts.

When an organisation becomes stricken by 'politics,' to use the Mintzberg term, then it is in danger of pulling apart; ' . . . means of power technically illegitimate, often in self interest, resulting in conflict that pulls individuals or units apart.'<sup>318</sup> The growth in power by the sectoral DGs comes to mind, and the Policy Networks. The staff concentrate less on their work but rather more on fighting against each other. The Commission was very much divided into DGs, and a range of groups more interested in fighting each other than co-operating. Within DGs the struggle was also fierce at times. A state of 'politics' is a dangerous situation for an organisation to be in and can mean its demise.<sup>319</sup> Ideology can keep the internal forces from pulling apart and tone 'politics' down.<sup>320</sup> Usually this has been the case in the Commission, and its latency for internal politics and pulling apart was kept under control. But during its weak phases with a less charismatic leader and ideology, 'politics' broke out and caused major problems. High states of politics can allow for major changes to occur in the organisation, and if these are allowed and accepted as necessary then the organisation has chances of survival.<sup>321</sup> The Commission is at one of these moments currently.

#### 9.7.2 MINTZBERG AND THE DGs

After considering the Commission as a whole; the logical corollary following the dictum that the large is merely the small writ large should show the DGs, as the main organisational sub units of the Commission, reflecting the larger Commission situation. Thus consideration, on a case by case basis, of the DGs will now be performed.

The 'machine bureaucracy' fits in part DG AGRI more than most of the DGs. Certainly it is said to be the most formal of the DGs and the most bureaucratic. But it does not have the 'machine bureaucracy' trait of repetitive and standardized tasks. Also knowledge is not kept at the top what with the many alleged Policy Networks and fiefdoms run by Heads of Unit. That machine bureaucracies have competition between their units is one thing; the insulated and isolated fiefdoms of DG AGRI's units goes way beyond this situation. Their competition seemed to be more aimed at anyone who challenged their policy area and less at other units. There are tendencies pushing DG AGRI; DG ENV and all of the DGs in the direction of acquiring more of the 'machine bureaucracy' characteristics, but these are tendencies and the reality on the ground is more complex and one of mixed Mintzberg models.

The 'diversified organisation' model can also be found, all the DGs particularly, owing to the decentralisation now have to, more than ever, provide the typical services of the diversified organisation: legal and financial services. Their headquarter function has increased with the growth in horizontal units and the various personnel reforms within DGs. That various units often deal with specific markets has always been the case, in particular in DG AGRI and DG REGIO. However, the autonomy of the managers within the DGs, if the Heads of Unit are considered, has been weakened. Whilst the DGs were trying to develop corporate strategies it was still the case that most of the initiatives originated from the staff. That said, the increasing strength of the Directors General and the horizontal units have gone hand in hand with the increase in 'machine bureaucracy' elements in the 'divisions' as should be expected. But if

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<sup>318</sup> See note 235 Mintzberg (1989p.237

<sup>319</sup> *ibid* p.276

<sup>320</sup> *ibid* p.277

<sup>321</sup> *ibid* p.277-278



this is the trend, as seems to be the case, it is far from complete and it is difficult to see any of the DGs as fitting totally within this model at this stage.

Two DGs have elements which fit into the 'entrepreneurial organisation' as defined by Mintzberg or to be precise units and staff within them have behaved in this manner. The key element in this organisation is the personal, direct supervision of a chief executive over an informal, flexible organisation with few middle managers. There should be among other things a sense of mission and a flexible, very centralized, decision making system which enabled swift and prompt responses. DG ENV showed remarkable entrepreneurial skills in particular under dynamic Commissioners in the nineties. The atmosphere was informal and mission oriented. But what was noticeable was the power that individuals had, in particular the true entrepreneurs, the Heads of Unit. Again the Commission habit of allowing fiefdoms to appear was shown in the DG. The chief executive role was literally devolved often to Heads of Unit, or a Commissioner would set the general tone and leave the rest up to the dynamic entrepreneurs. That this was not what Mintzberg really expected in his model reflects the difficulties of analysing the DGs and Commission. DG REGIO had dynamic Commissioners in the past who empowered the staff and drove the organisation on with a sense of mission; organisational informality and reasonably low staff turnover were stressed to be typical and management relaxed.

The Mintzberg model of the 'innovative organisation' fitted in particular DG ENV and DG ENT. Both had their organigrams changing fairly regularly to take into account new projects which were often the result of initiative being taken far down in the organisations and then incorporated into the formal management plans of the DGs. The rapid increase in horizontal units in particular in these DGs reflects the prior absence of effective 'machine bureaucracy' methods and stressed the highly decentralised and organic nature of their structures which grew in line with the perceived opportunities in the regulatory environment. Units like the REACH Unit in DG ENT and the Waste Unit and others in DG ENV reflected the creation of units to deal with large projects. Other less dramatic projects were effected by smaller groups of officials detailed to complete them. These officials were either detached from their previous dossiers or did the work in addition to them. The entrepreneurial spirit in DG ENV can be observed in the many directives that were the result of open windows of opportunity as stated in the earlier chapter on the subject. The enlargement project likewise resulted in units dedicated to the completion of the mammoth project. DG AGRI and DG REGIO also had enlargement units set up for the purpose.

However, the neat labelling of DGs is extremely difficult. Both DG ENT and DG ENV were being moved away from the innovative model and incorporating elements of the 'machine bureaucracy.' Whilst greater coordination was doubtless necessary in the DGs, and within the Commission as a whole, their management had become more top down and less that of integrating managers. The growth in horizontal units to integrate DG ENT for example went allegedly hand in hand with increasing bureaucratic controls restricting the sectoral units which had previously been very similar to the 'innovative organisation.' Now staff were being stripped from the sectoral units to man the horizontal ones.

Which leads to the last of Mintzberg models the 'missionary organisation.' DG ENV in particular showed a strong adherence to ideological stances, both European and that of the environmental movement. The sheer scale of the legislation generated by the DG is indicative of their shared values and motivation.<sup>322</sup> The dismay and resistance at the increase in rules shown

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<sup>322</sup> See note 6 Mazey; Richardson (1997) p. 184.'

by the staff<sup>323</sup> indicates their comparative absence previously. DG REGIO was described as being a soft organisation almost family like; the staff of this DG have promoted the European project extensively and MLG owes much of its theoretical basis to their success. Indeed idealism and optimism have been used to describe the management of the DG and certainly when the DG was threatened by the Sapir report's recommendations, they pulled together as one to respond. However the split between the policy making division and the implementing ones grew; and there seemed to be indications of elements of the DG being over swayed by other interests, 'external pressures,' than those of the Commission. As with the other DGs more bureaucracy and rules were being enforced in the DG. The danger of over dependence on ideology is that there are many shades of grey and it is a question of definition as to what is in the European project's best interests at any given point in time. Also the loyalty to the old supporters of the project and an older vision of it can be problematic for the present. Quite apart from this is the danger of sectoral loyalty and ideology replacing European project idealism.

Within the organisational structure of the DGs the horizontal units were said to be the most idealistic in terms of the European ideal and also the more interested in grand projects and politics. Equally these units were said, by some, to be the most interested in extending bureaucratic controls. The sectoral units had European idealism but also sectoral loyalty; unsurprising considering their constant interactions with their sectors. The success of the European project in terms of legislation and integration show that usually European loyalty prevails and a minimum of rule enforcement within the DGs is necessary. However, with the decline in idealism and drive of the project in the post Delors period, and the concentration on 'less but better' and more bureaucratic controls, the DGs also saw a decline in the strength of idealism as a cohesive force within their ranks, although there was a problem of locating cause and effect. The centrifugal tendencies of sectoral units was curbed by rules and this led to even less idealism in these units. Interestingly, though, the growth in more idealistic horizontal units, which first enforced bureaucratic measures for which they were created, would support the contention that there is first bureaucratisation in the Commission and then a growing idealism which then pervades the whole of the organisation.

The DGs investigated showed, on the whole, an intriguing mixture of the Mintzberg models, much like the Commission itself. Given that certain organisational types are better at achieving specific tasks logically there would be an expectation to see task and organisational type clearly related. Each of the DGs had its own reasonably specific task: DG REGIO and DG AGRI were largely paying DGs; DG ENT was a policy making and governance guiding DG; DG ENV was a typical policy making DG until recently. And yet there was a clear mixture of organisational types in each of the DGs and this is unusual.

Unfortunately the various models would not work easily altogether in Mintzberg's theory and they do not in the Commission. Some examples make this clear; the 'machine bureaucracy' elements are clearly wasting the potential of 'adhocracy,' 'professional' organisational staff, who are professionals and policy-makers not standard bureaucrats. These officials waste vast amounts of time carrying out procedures rather than ensuring project quality. The 'missionary' and 'entrepreneurial' organisational adherents; the idealistic opportunist officials who have been so important for spillover and engrenage have huge difficulties with the 'machine bureaucracy' organisation DG hierarchy which tries to control them.<sup>324</sup> The 'machine bu-

<sup>323</sup> See note 235 Mintzberg (1989) p. 291. 'Members of an organisation who remain true to the norms of its traditional ideology will not take kindly to administrative types trying to routinize it, to enhance their own formalized power at the expense of the established system of beliefs. Furious confrontations can be expected.'

<sup>324</sup> *ibid* p. 291. 'Members of an organisation who remain true to the norms of its traditional ideology will not take kindly to administrative types trying to routinize it, to enhance their own formalized power at the expense of the established system of beliefs. Furious confrontations can be expected.'



reaucracy' for its part has major problems with officials operating as if they were in an 'entrepreneurial' or 'missionary' organisation and leading units of the DGs in such a manner to the detriment and annoyance of the hierarchy, as happened in DG ENV. The decline in idealism and the increase in 'machine bureaucracy' are clearly related in the Commission. A Delors with a 'missionary' and 'entrepreneurial' organisational approach created major problems for the 'machine bureaucracy,' and apparently tried to 'break' elements of it. The Cabinets are a form of 'adhocracy' which has openly competed with the 'machine bureaucracy' and led to duplication of tasks and great antagonism between the DG hierarchies and themselves.<sup>325</sup> The DGs with their 'diversified' organisation approach are pulling apart an organisation which was founded on 'missionary,' 'innovative' and 'entrepreneurial' organisational elements and lacks the strong centre posited in the model. The end result of all these conflicting models is the fragmented Commission of the research; as its ideology declined so the level of 'politics' increased dramatically. Ideology has often been the only thing holding the organisation together and-or a strong leader, but neither of those have been very evident recently. The constant circumventing of rules and use of 'informal' organisation management methods reflect the incompatibility of the various Commission elements. These have all played an important role in the survival of the Commission but are often highly wasteful and destructive when combined as they are. If the survival need could be removed then a far better organisation could easily be constructed.

### 9.7.3 HOFSTEDE AND THE COMMISSION

Hofstede makes the justified step of suggesting that Mintzberg's data offers itself to comparisons with 'national cultural profiles.'<sup>326</sup> Applying Hofstede's Power Distance versus Uncertainty Avoidance variables to the Mintzberg configurations resulted in some interesting results. The various countries score as follows: UK style being close to that of the 'adhocracy' with Low Uncertainty avoidance and Low Power distance; France favoured the Mintzberg 'machine bureaucracy' with High Power Distance and High Uncertainty Avoidance; Germany combined High Uncertainty Avoidance with low Power Distance, and so fitted in with the 'professional organisation.'<sup>327</sup> So the Commission and its mix of Mintzberg model types is probably also linked to the many European national cultures involved in it. These have affected it at various times with the French – Mediterranean officials creating the 'machine bureaucracy' elements and subsequently feeling at ease when 'machine bureaucracy' elements predominate. The UK and many north European countries find this method of operating odd if not autocratic, as was seen in the chapter section on reforms, and promoted the 'adhocracy' much to the displeasure and confusion of their southern European colleagues. So trying to modify the Commission to make it more like one of the Mintzberg models and so less 'pathological' seems doomed to fail; there will always be an offended nationality, who will feel 'alien' to the organisation. The mix of Mintzberg models and Hofstede national profiles in the Commission reflects, in part, the mix of nationalities in the EU and Commission which leaves the Commission appearing to be a somewhat 'organic' organisation.

That said, Monnet's bureaucratic ideal, and the proto Commission organisation he headed in the French bureaucracy was reasonably like the 'adhocracy – entrepreneurial' models so the nationality issue is less serious than it might seem. Monnet always wanted to keep national issues and methods of doing business away from the Commission. It was to be the exception that proved the rule. French bureaucracy, as a whole, behaved like a 'machine bureaucracy' but he was able to head a small organisation like an 'adhocracy – entrepreneurial' organisa-

<sup>325</sup> Ross, G. *Jacques Delors and European Integration*, (1995) Cambridge, Polity Press p.161

<sup>326</sup> Hofstede G. *Culture and organizations: Software of the Mind*. (1991) McGraw-Hill International UK Limited

<sup>327</sup> *ibid* p.152

tional mix. Thus it was quite possible for national tendencies to be avoided if the will was there, and if the tasks of the organisation were kept clear. The organic mix in the High Authority-Commission was somewhat artificial and unnecessary; it had a tendency to import national bureaucratic styles as it became more bureaucratic, and as MSs put pressure on it by demanding that quotas of staff from MSs be recruited and that Commissioners be supported by Cabinets all of the same nationality. Inevitably blocks of nationalities were the result and strong nationality based networks in the Commission which reinforced the nationality issue. This was not what Monnet had wanted. Since his model had worked previously it could work for the EU but there would have to be a radical rethink about the allocation of tasks, and the governmental environment in which the Commission operated, to enable Commission staff to return to top level prioritizing, and organizing and not pseudo ministerial governing.

## 9.8 IMMUNISATION THEORY

We now have the benefits of Mintzberg and Hofstede who have shown us just how odd the Commission really is. They show that it is a benevolent 'pathogen' which performed a highly specialised task effectively enough but as with all 'pathogens' they are hard to control and carry certain risks. Certainly the current state of the EU owes much to the immunization process and the 'pathological' effect of the Commission with its organisational goals and weaknesses. It is time to return to the general immunization theory and the papal extension of it to see what insights they can provide us with.

### 9.8.1 IMMUNISATION THEORY REVISITED

The first point is that the enlargement has had exactly the catalyst effect that it was expected to have had. The severity of the reforms was in part due to the enlargement and the effects were all the more visible. The enlargement forced changes in policy areas and so resistance to surface, which would otherwise not have been noticeable. The enlargement made unsatisfactory organisational forms associated with the status quo in some policy areas simply unacceptable and so revealed them. Indeed the enlargement seems to have been used by some to justify and force changes, reorganisations and reforms of policy areas. The reactions of NMS officials were a useful source of insights into the Commission DGs. They were able to report on the downsides of the organisation that they had seen all too clearly as outsiders very much dependent on it and the officials on the inside. At times the requirements that the Commission placed on the NMSs revealed the serious deficiencies in its own organisation. But above all the enlargement stress showed officials at their most innovative and DGs at turning points in their histories.

The thesis expected that the Commission would find itself in an arrested state of sectoral fragmentation in the absence of political dynamism, weakness of idealism and declining support from the MSs. The backdrop of a decline in 'European' ideological commitment and idealism has been seen to have occurred. That said it remains latent in the officials and the Commission at all levels. The decline in European idealism seems to have been matched and positioned to an extent against sectoral loyalty and idealism. The pattern of European idealism succeeding in its first goals of war prevention, but the weakening and falling victim to sector power began with the ECSC, with MSs rallying behind their sectors and the ECSC finally faced by industry coalitions including MS governments which it failed to break. Idealism succeeded in blunting MS rivalry but not sectoral. The weakness of the Prodi Commission was also apparently owing to weakness in ideology and sector strength, finally the College even avoided formal voting. Political leadership seemingly naturally descended to the sectoral Pol-



icy Networks and the Director Generals, the bureaucratic heads of the DGs, whose power increased accordingly.<sup>328</sup> Often Policy Networks are based on the DG as a whole but not always. Also power apparently accrued with the MSs during the period of Commission weakness. Sectoral fragmentation took place on a grand scale and the resultant problems of the Commission and the EU as a result have been discussed. The lack of Commission coordination and communication, with DGs more concerned with in-fighting than creating coherent policy, grew after Delors, and almost all those interviewed stressed that this has been a very serious problem and remains so. Furthermore sectors seemed to be increasingly fragmenting internally and the DGs likewise and allegedly the DGs were also a motive force in the fragmentation. The Commission has been said to be increasingly more like a large collection of organisations than a monolithic organisation, and the interviews underscore this, but suggest that this is becoming significantly more pronounced, dangerously so. Some DGs seemed to be increasingly split into warring parts, at times with different idealistic leanings and agendas, and also national origins. Policy Networks allegedly reinforced this division of the DGs into their elements and enable officials to practically construct their own organisation and so circumvent hierarchy. The Commission itself increasingly succumbed to the division into sectors which was useful in achieving the spillover effect in the MSs.

The MSs had responded to the over dynamic Commission as expected and forced the Commission onto the defensive. The strong presence of national groupings within DGs was alleged to have occurred increasingly. Successfully, they appeared to have counter penetrated the Commission and encouraged its gradual dissolution or rather dissolving into its component parts, its nationalities. For the Commission the balance between its supranational and intergovernmental elements has always been tenuous and, as was argued earlier, the Commission has always had a certain intergovernmental character, but it became more pronounced. Policy Networks with MS officials and other vested interests prominent within them have helped to insulate certain policy areas and associated Commission officials and sectors from reform of anything but a superficial sort. The CAP saw the Commissioner concerned allegedly effectively working alone to outmanoeuvre the alliance of MSs and large portions of DG AGRI which were bent on resisting change. The partial success that he finally won revealed the alleged continuing strength of the MSs, Policy Networks and associated Commission officials. And it underlined the danger of them operating together alone to dictate policy.

Without leadership and ideology the Commission retreated back from its porous, multi surfaced self to become a more bureaucratic organisation although rigidity and defensiveness were not as effective as leadership and ideology in keeping it together, it had no choice. The Commission leadership responded to the arrested state of their organisation and the growing evidence that it was fragmenting or rather dissolving, with a strengthening and multiplication of bureaucratic measures and reforms apparently aimed to insulate officials from the MSs and vested interests and to allow central control and coordination. It also seemed less of a threat to the MSs more of an international bureaucracy than a proto federal government with ambitions. Unsurprisingly the bureaucratic retreatism, initially at least, led to reform resistance and staff frustration. At the same time the reforms were patchily enforced and the Commission prepared for another outburst of federalism by Prodi with the attempt to make DGs more like national ministries and Commissioners like ministers. Prodi wanted to free officials up to make policy again. The actual outburst came with the creation of a draft European Constitution by the President alone which surprised many within the Commission quite apart from those outside, yet more evidence of its multi organisational reality.<sup>329</sup>

<sup>328</sup> See note 263 Kassim (2004) p. 36

<sup>329</sup> See note 2 Kassim; Menon (2004) p.101

EU and Commission fragmentation has resulted, with actors and procedures added at every EU level with increasing opacity, from the sovereignty stalemate that exists in the EU. Two such extreme poles as the Commission and the MSs are unlikely to be willing to compromise and thus ever more actors and procedures are created to allow some flexibility into the system since major reform seems nigh on impossible. Like in the cold war, with the ideological impasse at the heart of the system, reflected in a nuclear impasse, led to tension and skirmishes in outlying states with attempts at, or at least perceived attempts at, adopting and creating allies and so encircling the opponent, the EU seems to function in a similar manner. Rather than set up a new simplified system, federal or not, neither side have proven willing to compromise on the issues at the core of the EU, federal supranationalism or a more diluted affair. Complexity and opacity are the result. The Commission has been stated to have had not one person with a sense of being responsible for something, surely a sign of complexity and confused lines of responsibility and accountability rather than laziness or real personal irresponsibility.<sup>330</sup> The other EU institutions which contributed to this situation should be included in the responsibility problem; they certainly added to it and did little to resolve it. It took a sole individual to highlight the problem and refuse to go away, to force the issue onto the table. Fundamentally the EU and the Commission itself are unable to change their structures. And in both the effect of structure and personnel on output is decisive, and political control from above minimal, it is simply hard for the hierarchy with little knowledge to dictate what the officials do in an organisation based on knowledge and expertise. Also there are simply too many vested interests, foci of power, and veto points, right through the EU to allow major changes. Changes in policy direction, tone and content are often achieved in the Commission by placing, often using informal methods, staff in key positions or by major disruptive reorganisations of staff.

The High Authority - Commission have behaved like an inoculation, a mild disease infection. The defences of the hosts were better prepared than might have been expected, and extremely quickly the DP institutions surrounded the new organisation. For a disease this would have been a major blow, but for the deliberate inoculation it turned out to be positive, maybe not for the cause of a federal Europe which possibly hoped for a critical mass to develop as spill-over occurred to force a whole range of federal institutions into being in a more favourable environment for them. The vaccine was intended to strive for and bring about federalism and to that extent, by its own standards, it has so far failed to achieve its federalism goal.

The Commission, the vaccine 'pathological' (deviating considerably from the norms) from organisational perspective, has been surprisingly successful in its dealings with the MSs, in part due to its alien form.<sup>331</sup> Its curious blend of legal, bureaucratic, information based technocratic and political aspects all in one, have given it the edge in its dealings with the MSs without actually destroying them.<sup>332</sup> As an organisation it has been very successful and seen its competences, staff numbers<sup>333</sup> and budget increase. Its ability to turn one of its many aspects where it is strong to face the MSs where they are comparatively weaker, to either combat

<sup>330</sup> See note 15 Page (1997) p. 162 'The problem of identifying responsibility and generating accountability results more from the need to mobilize support from representatives of member states in diverse, but predominantly bureaucratic, arenas of decision making. While it is not possible for EU policies in reality to "emerge from nowhere" as Mazey and Richardson (quoted in McLaughlin and Jordan 1993: 129-30) put it, the fact that they may appear to underlines the special difficulties of identifying responsibility in Brussels.'

<sup>331</sup> Dinan, D. *The Commission and the JGC's* in Nugent, N (ed) *At the heart of the Union*, second edition, (2000) Basingstoke, Macmillan Press, 2000 p.269

<sup>332</sup> The Commission is at times: a policy making think tank, it is judicial and political in assessing the CEECs, police like to companies issuing fines, creates discusses and votes on legislation like legislature, typical ministry implementing policy in comitology, diplomatic corps in its dealings with MSs and other states, a political party pursuing its own ideological goals. A miniature government all in one.

<sup>333</sup> See note 263 Kassim (2004) p.35



them or provide an alluring complimentary aspect to tempt them, has served it well. There are several examples of where it has done this; to combat MS politicians with limited mandates and time, the Commission can turn its bureaucratic strength of longevity and organisational expertise and memory; its legal position is helpful to MSs who can state that the Commission made them follow a course of action and so circumvent national parliaments, vested interests and the public; its legal position is attractive to MS officials wanting to pursue a project which is not supported politically at home.<sup>334</sup>

Its various governmental aspects have been very useful in the development of the EU itself and its institutions. Its bureaucratic identity has, paradoxically, been crucial to the introduction and development of democracy in the EU. The apparent extremeness of this faceless, unaccountable bureaucracy drove DP and the MSs to race to catch up with the European project and to brake it.<sup>335</sup> This bureaucratic quality of the Commission constantly forces MSs to give power to the EP when the EU is expanded. Thus paradoxically the Commission's 'undemocratic' nature helped give the EU the democratic identity it has.<sup>336</sup> The Commission has even used its 'bureaucratic' identity to provoke legal responses. After giving UCLAF/OLAF, its anti-fraud agency, real powers to search premises the Commission then stated that it was only logical to provide a legal framework to contain the new organization and a new position of European Prosecutor to use the framework.

The relationship between host(s), here the MSs or EU polity, and the disease is always cyclical. Commission officials were allegedly aware of the cycles of centralisation and decentralisation which took place in the Commission and in their DGs although they were more worried about the recent situation which they stressed was more acute.<sup>337</sup> The Commission was seemingly being fragmented internally owing to sector influence and Policy Networks. Rather like the unfortunate rat the 'carrier' of the bubonic plague to human hosts which was also infected by the pathogen and died as a result, so the Commission organisation seems to have become infected by the Monnet Method. The Method's technique can be summarised as follows: the breaking issues and governments down into manageable technical details and officials; the placing of sector interests above political ones; the empowerment of the innovative, expert official; the bringing together of officials owing to their expertise and the holding of politicians at arm's length or reducing them to mere fellow network members; the championing of small flexible groups over large bureaucracies; the encouraging of informal, egalitarian behaviour; the using of an ideology to undermine and dissolve hierarchies whilst uniting the small groups and attracting new officials to it. Policy Networks seem to fit the bill almost as neatly as the Commission, an unfortunate fact for the latter. It would seem logical to argue that so long as the fleas were content to feed off human blood and spread the pathogen amongst them the rats might be expected to have enjoyed some comparative peace, but once human hosts become less available then the rats alone would have to feed the flea. Sector fragmentation was always a possible danger for the Commission, but strong leadership; a dose of idealism; political power and constant expansion helped keep the Monnet Method constructively at work in the MS hosts. When MSs effectively neutralised the idealism, political

<sup>334</sup> Smith, M. *The Commission made me do it* in Nugent, N (ed) *At the heart of the Union*, second edition, (2000) Basingstoke, Macmillan Press, 2000 p.175

<sup>335</sup> Drake, H. *The European Commission and the Politics of Legitimacy in the European Union* in Nugent, N (ed) *At the heart of the Union*, second edition, (2000) Basingstoke, Macmillan Press, 2000

<sup>336</sup> See note 105 Nugent (2000) p.291. 'Over the years, these elitist arrangements have increasingly come to be seen as unsatisfactory. Pressures for reform have stemmed particularly from the growth of policy responsibilities at EC/EU level, and from perceptions of extensive powers being in the hands of appointed and unelected officials in the Commission on the one hand and indirectly elected politicians in the Council on the other (indirect in the sense that ministers in the Council attain their position via national, not European elections.'

<sup>337</sup> Interviews with Commission Officials: DG REGIO and DG ENT

drive and expansion that kept the Monnet Method beneficial to the Commission and the project, there was always the likelihood that it would turn on the Commission itself.

Linked to the above was that whilst the sort of organisation Monnet favoured would be secure from his Method and could not really suffer from sectorisation; one that deviated from it could. Not just that, but it would also be liable for the other aspects of bureaucratic disease like internal conflicts and lack of coordination and strategic direction. As long as the organisation kept moving, expanding and ideological, these would be latent and there but weak, however once the organisation slowed down then the symptoms would emerge in force; this is exactly what happened.<sup>338</sup> Unfortunately these are also constantly lurking in the EU which often follows the Commission's lead, or rather is directly affected by it.<sup>339</sup> The Commission has in a sense infected Western Europe with bureaucratic disorders where before there were political ones; sectoral competition, lack of coordination and disintegration replacing the MS political rivalry. Within each DG or unit in it, the bureaucratic survival strategy of strengthening and developing its own sector and thus guaranteeing a loyal client support base (so for example for DG REGIO small recipient states and regions make an ideal client base) seems to have logically dominated the bureaucratic period that was observed. Unfortunately the only really helpful remedy for the various symptoms of bureaucratic disease are clear lines of responsibility and accountability<sup>340</sup> and democracy.

### 9.8.2 EXECUTIVE POWER INCREASE

It is impossible not to notice that the real loser in European integration has not been the MSs as such but rather democratic parliamentarianism. The real struggle has been between DP and the executive arm of government; ministers and officials, although of these the officials are the real winners. The whole MS versus Commission struggle seems to have been something like a red herring for what is really happening. Maybe there is a micro dialectic process much as there is with evolution and a macro one which is between DP and bureaucracy. Or like the difference between long term climate change and short term weather fluctuations. Each micro stage of MS-Commission rivalry fails to bring the process to an end and the MSs are lured by the executive possibilities of the project into further integration which they have proven to be both unwilling and unable to permanently halt. The forces of the executive have found many a possibility in the European project to cut political costs and to decrease the DP controls over themselves. DP responsibility has been stripped, to an extent, from the politicians and the executive acting in the EU. They have been able to share in the Monnet dream of experts ruling without political restraints. They have become curious bureaucratic-politician actors themselves rather like the Commissioners when they work with the EU. The temptations of power without accountability seem to have proven too great for many. It is the reform resistant Policy Network which is the model for the future at present and not a federal European government. The EP is not able to provide a solution to this model as increases in the EP's powers unfortunately makes matters more complex and even less democratic.

The creation of each new governmental layer results in a theoretical blocking of the Monnet Method by the Nation State's executive defence mechanism. However the sheer weight of work combined with the tendencies already stated results in effective power devolving to the officials and the roles of the officials, ministers or Prime Ministers being fragmented. At first

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<sup>338</sup> Donelley, M and Ritchie, E. The College of Commissioners and their Cabinets in Edwards G (ed) *The European Commission*, (1997) Cartermill, London p. 45 Bureaucratic problems said to be internal conflicts, problems of coordination, lack of strategic direction.

<sup>339</sup> Peters 1992 p.15 referred to see note 6 Mazey; Richardson (1997) p.185

<sup>340</sup> See note 338 Donelley; Ritchie (1997) p.45



they appear to be in a perfect position to audit and carry out effective controls over legislation and so defend democratic principles. The Council is often stated to be the democratic legislator with a mandate. However the mandate is usually very much domestically oriented and rarely linked to the stances that the Council may take; for the EU level there is a mandate vacuum of sorts.<sup>341</sup> It is ironic considering how much 'domestic' legislation will result from this vacuum. The executive and its members are drawn into the gears and so into behaving as members of the European Union layer rather than defenders of the Nation State; this is not a secret and is the goal of the integration process. The possibility of performing several roles all at once without one or more being downgraded seems utopian. For political players in rational choice theory, the ultimate goal will be personal and political power rather than constitutional responsibility as far as this is possible. Rational actors in the current system are likely to attempt to secure and improve their own political positions at home and in Europe by combining their roles to that end at whatever cost to the greater good. Tax payers are a notoriously diverse group, hard to unify, reward and gain loyalty from domestically let alone in other countries. It is better to reward small interest groups and constituencies on the cheap at the cost of the European tax payer via Europe. Assisting such groups increases a ministry's ability to gain information and perform its tasks with a pleased domestic constituency of farmers etc. This of course also provides benefits for the minister concerned. So successful has this system proved for the executive arm of the EU that it resists any change to it until the very last possible moment when political costs are finally too great.

The impression that is given is one of the executive increasing its power considerably;<sup>342</sup> much of this increase devolves to the bureaucrats (COREPER) who do the work. The bureaucrats appear to act often in harmony over the 'formal' divides, COREPER and the Commission and elude typical controls on their behaviour. The well known trick to avoid taking responsibility is for the executive in the form of the ministers of the MSs to blame the Commission for the unpopular legislation or simply problematic rules.<sup>343</sup> The Commission states rightly, often enough, that it was simply doing what it was asked to do. The result is that citizens treat both as responsible; no-one desires to accept accountability thus all will be held accountable. In elections voters imply that national leaders as well as the Commission are responsible for their malaise and reject both whenever possible.<sup>344</sup> Reality shows that they are partially right, the Commission is all too happy to take on new tasks to extend Europe into new areas and national politicians use the Commission's legal role to secure unpleasant, if necessary, national goals. In general, the bureaucrats of the MSs and the EU are able to act almost without restraint and with low legitimacy.<sup>345</sup> The forces of DP, in the form of referenda seem to oppose the EU, as it currently is. They seem to express a profound mistrust in its legitimacy and as the 'ultimate' providers, at times, of DP legitimacy in MSs they should be

<sup>341</sup> See note 105 Nugent (2000) p.291

<sup>342</sup> Dinan, D (ed) *Encyclopedia of the European Union* (2000) London, Lynne Rienner Publishers p.287 'empirical studies suggest that many European policies and practices-for example, the European Monetary System, European summitry (the European Council), and the weak role of the EP-were deliberately undertaken in such a way as to maintain and strengthen executive autonomy.'

<sup>343</sup> See note 241 Smith (2000) p.182

<sup>344</sup> See note 19 Peterson; Bomberg (1999) p.89. '...yet falling public support for the EU as an institution may have been a consequence of the way in which the internal market was constructed in the post SEA period. While the internal market was (and remains) extremely broad as a sector, the representation of interests was often narrow and restricted in the frenzy to create „a Europe without frontiers“. Although the EU embraced more „horizontal policy initiatives over time, many key decisions after 1987 were taken in closed circles of ministers, officials and policy networks. Internal market directives were often transposed into national law using subordinate legislation which attracted little debate in parliaments or the press (Wallace and Young, 1996). One plausible explanation for declining public support for the EU, despite apparently solid support for the internal market, was that the 992 project at least promised benefits of one kind or another, for virtually all (in a way, for example, that EMU never could). Decision making to construct the internal market, however, was often the domain or remarkably few.'

<sup>345</sup> *ibid* p.256. 'As it is now, EU decision makers generally operate with both surprisingly wide discretion and predictably low legitimacy.'

accepted as correct DP reflex responses to the situation as it is, and not just a sign of ignorant voters.<sup>346347</sup>

To cope with the enlargement and EU complexity, Commission officials will and are, allegedly doing more informal ‘behind the scenes chairing’ to ensure consensus prior to the various committee meetings.<sup>348</sup> Inevitably more of this chairing will probably take place in Policy Networks where complex procedures are kept to a minimum and where personal contacts lubricate the processes. Ironically in these informal networks the number of actors who really make decisions are often said to be oddly few in number, whilst the same authors state that the EU allows unbelievably large numbers of actors to formally seem to swarm over the policy making field.<sup>349</sup> Seemingly this results in the converse happening where real decision making is concerned, the important actors with the real power get fewer and fewer.<sup>350</sup> The following quotation is interesting; ‘But in judging the quality of policy, surely one important criterion must always be how many actors have a voice in shaping it. We have been struck by how few actors sometimes shape, even, make important EU policy decisions.’<sup>351</sup> Democratic policy making should empower a fixed and sensible amount of actors, with constitutionally allocated competences and powers, with some like the parliamentary opposition providing a critical stance. Experts can be involved but not exclusively; unfortunately Policy Networks value technical detail and those who provide it very highly. Inclusive democratic decision making would therefore improve the quality. A possible explanation for the few actors is that Policy Networks can also exclude actors from the policy making process.<sup>352</sup>

### 9.8.3 DEMOCRATIC ISSUES

The promotion of ‘civil society’ in the EU and by the Commission in particular should be discussed briefly. It seems to be offered as a sort of alternative form of democratic legitimacy and this seems problematic; ‘European level groups provide the remote central institutions with a strategy to overcome the democratic deficit by putting them in touch with grassroots opinion and the opportunity to simplify their dialogue.’<sup>353</sup> and under a heading legitimacy; ‘That said, there are political forces actively engaged in the project to democratize the EU. The glimmer of a European civil society is discernable.’<sup>354</sup> This represents another splitting of democratic actors, in this case the citizens and voters, into roles, and then winning these actors over to be caught in the gears of the Method which will result in the gradual growth of a demos of sorts. Whilst it is normal that within MSs voters also support and are involved in various elements of society as miners, church workers, trade unionists, there is not the suggestion that this additional membership detract from their democratic identity as citizens. With corporatism there was the replacement of voting rights with those of interest representation; any tendency in that direction is democratically ‘pathological’. Whilst it is not suggested here

<sup>346</sup> See note 19 Peterson; Bomberg (1999) p. 273 and p.256. ‘More generally, “normalised” politics are precluded by the EU’s vast number of procedures for decision making, reliance on backroom bargaining and blurred lines of accountability. The politics of the EU remain underdeveloped, and its democratic legitimacy weak.’

<sup>347</sup> See note 95 Shackleton; Peterson (2002) p.349. ‘Moreover, the “permissive consensus” that allowed bold steps forward in European integration without public protest or even attention during most of the history of the EU is now gone. Citizens’ sense of loyalty to the EU institutions is generally weak... Weak loyalties cannot be separated from increased institutional complexity. ...It might be comforting to pro Europeans, but almost certainly misguided to think that the response of Irish voters to the Treaty of Nice in the June 2001 referendum, where a majority rejected the treaty and a still larger number did not bother to turn out, was an aberration. Much needs to be done before the EU citizens truly identify with the institutions of the Union as “their own”’

<sup>348</sup> Interviews with Commission Officials: DG ENT

<sup>349</sup> See note 19 Peterson; Bomberg (1999) p.31

<sup>350</sup> *ibid* p.89

<sup>351</sup> *ibid* p.272

<sup>352</sup> Benz (1995) referred to see note 142 Börzel (97/19) p.29

<sup>353</sup> See note 342 Dinan, (2000) p.291

<sup>354</sup> *ibid* p.326



that the Commission desires corporatism even the step towards equating a diminishing of the democratic deficit with the promotion of civil society should be resisted. It seems doubtful that this would be what Monnet would have wanted in the long term.

The EU as it stands leaves the observer with a rather undemocratic aftertaste:

‘Our tour d’horizon of EU decision making may leave many readers thinking that the Union is not only democratically deficient, but also not very efficient. Many of its procedures seem undemocratic, indefensible or unsustainable (or all three). The reader who draws this conclusion might wish, however, to stop and consider how “young” the EU is as a polity, and how recently it has been transformed from “a system essentially concerned with the administration of things to one concerned with the governance of people.”<sup>355</sup>

These authors stress the youth of the system as an excuse which may or may not be an excuse for the current undemocratic reality of it, but this reality does seem to demand a resolution; the next stage in the evolution that must now occur to make the EU fit to govern people. A technocracy could handle ‘things’ but the EU is increasingly affecting people and a better alternative is required. The same authors wind up their conclusion by quite rightly quoting an expert working in the EU system who makes the comparison of a ‘funny’ EU system to the less funny system of war it replaced.<sup>356</sup> The inoculation succeeded but is getting overly odd and ‘funny’ and begging for modification. Basic controls on bureaucracy relate to merit and budgets, the first of these has been notoriously absent in the Commission and the second is hard to use in practice. Other basic democratic controls over the growth of bureaucracy mentioned before are also missing and the growth of executive bureaucratic power and output are the result. In a sense, though the very heavily over-executive dominated EU, with its essential complexity and fragmentation, are creating the spillover critical mass that Monnet possibly hoped for to pressure for a comprehensive European federal democratic system. The natural over extension of the executive which the European project has provoked and allowed for has generated an intolerable situation. The need for DP is more glaring than ever, and the inadequacy of the current system has rarely been more obvious. Certainly the voters in the referenda are fully aware of this. The natural defenses to the executive need to be reinstalled.

The thesis considers the EU and Commission to both have been effective and desirable; however it has also shown the increasing difficulties facing Europe of a continuation of the status quo. Part of the problem is very much linked to that of the growth in executive power of every description at every layer in Europe and that the Community project has assisted this build up. Applying again the organic approach there is a sense that the Monnet Method has led to typically bureaucratic disorders spreading to the political sphere in a manner which would not have been possible in a Nation State, or only in a modified form. Sectorisation exists in MSs, but there is at least the possibility of it being challenged by the centralisation procedures of cabinet government and DP in parliaments, where MPs have to attempt to represent the vulnerable non lobbyist voters. Monnet, by targeting the Coal and Steel sectors, set the tone of placing sector interests above political ones and this continues. There is little that the present EU and MSs can do in the face of this tendency which affects their own cabinets and has allowed them and national parliaments to be outmanoeuvred by well organised sectors, related ministers, officials and vested interests. The rise of the Policy Network, partly as a result of Commission - MS deadlock, is an example of the Commission and EU becoming prey to what has become an unintended infection.

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<sup>355</sup> See note 19 Peterson; Bomberg (1999)p.275

<sup>356</sup> McDonagh 1998:17 quoted see note 19 Peterson; Bomberg (1999) p.275

If MSs are, as MLG literature often seems to stress, themselves becoming more multi layered and divided, and no longer monoliths then it is undoubtedly in no small part owing to the type of Commission and multilayered EU which has set the pace. Whilst this Europe can be good for various lobbyists and organised groups it seems the average tax payer and voter, who was protected under the DP systems which had evolved and been fought for in MSs over the centuries, is rather very vulnerable. Indeed the voters and EU citizens seem to have received a lot of economic promises from the EU which have not been fulfilled; they were told that schemes like the Single Market and the Euro would generate jobs and growth but simply have not; economic stability is there but not a lot else.<sup>357</sup> The alleged fragmentation of the Commission and the EU; the growth in the executive; and the generation of excessive and badly coordinated bureaucratic - legislative output need to be restrained and reined in for the sake of DP and the citizen.

Whilst the organic comparisons and analogies discussed will inevitably be, to an extent, bound by the old adage *omnis comparatio claudicat*, they are also extremely helpful. But now to the next stage, the Papal Model.<sup>358</sup>

## 9.9. PAPAL MODEL REVISTED

Having laid out an organic analysis of EU evolution and stressed the need for a change the question obviously arises, what will happen if changes are not made? And are they likely to be made? Unfortunately the answer using a working model will be shown to be negative, unless the EU can shake off its historic evolution. That the medieval Papacy would be expected to show some similarities to the EU was stated in the theory. Now that the reader is familiar with the EU it is time to elaborate on the similarities it shares with the medieval Papacy and to make clear the warnings that the comparison reveals. The text will show how the Monarchs, like the MSs, the first line of defence of the medieval national bodies politic, became very much part of the European Papal system and ensured that it was executive dominated. The DP reaction in its most final of forms was resisted with disastrous consequences. But first to the Papacy as the system begins to break down.

The most fully developed stage in the medieval governmental system was found after the Avignon Papacy period which began 1309 where centralisation and governmental growth reached its heights. Soon afterwards fragmentation set in with a vengeance as will be seen. It is interesting that the same sort of thing has been said about the Commission recently; 'The Commission's combination of over centralisation and fragmentation.'<sup>359</sup> The Great Schism, (1378-1417) and the related Church Councils capture the interaction of the political forces of the medieval period in organisational form. To summarise the Schism the following can be said. Basically the Emperor called the first Church Council of the Schism to contain and solve the problem and the Church Council summoned the disputing Popes and related Cardinals to attend it. The Popes claimed their sovereignty rights and rejected the right of the Council and Emperor to decide over them. The Cardinals were split in their loyalties but were determined to limit the power of Popes in general and they were strongly linked to secular regional authorities which they often represented. The bishops and Monarchs were divided about the Popes' claims and generally supported the Church Councils where they were either present or represented. The Monarchs were keen to take any opportunity to trim back the Papacy as a

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<sup>357</sup> The Economist p.38, 29.04.06

<sup>358</sup> See Theory Chapter for details

<sup>359</sup> See note 7 Metcalfe; (2000) p.821



whole but they also recognised that their interests were best served by a viable if weakened Papacy. This is the impasse with which the medieval Papacy finally drew to a close. Something similar had existed when the Reform Papacy began the period of Papal Monarchy. In the period between, the balance of the opposing forces shifted to and fro, Popes destroyed/weakened Monarchs (Emperor Frederick II, and finally Emperor Henry IV) and Monarchs destroyed/weakened Popes (Gregory VII, Boniface VIII). On the whole a form of stalemate equilibrium was present.

Whilst the crises and conflicts make for interesting reading, basically the Monarchs wanted a Papacy which provided the tools of government and diplomacy which were so desperately lacking but they did not want to lose effective sovereignty. They were grudgingly willing to pay lip service to Papal hegemony in certain limited spheres but not in their domestic affairs. The Popes were welcome to assist them in these when invited and so long as it was in the interests of the Monarchs but not otherwise. Thus attempts by the Popes to demand too much sovereignty and-or to interfere in domestic matters were generally firmly resisted and successfully so. The Monarchs wanted the benefits of a functioning Papacy but not the political costs which is not so very different to the EU integration process. The following quotations about the Papacy and the Monarchs shows just how close they came to be over time. Together they formed a massive 'executive' power structure and whilst both were dependent on each other, both showed suspicion and competitiveness towards the other as far as was possible without threatening the system as whole. Even MSs like the UK show opposition to the Commission and EU but do not threaten its survival; the executives of the MSs are too happily bound into the EU to contemplate a radical overhaul. Although this is exactly what is required:

'The solidarity between the secular and ecclesiastical hierarchies, which became closer as the threats from below became more perilous, is the most important factor in the exterior history of the medieval church during its last two centuries. Most secular rulers made some gains at the expense of the clergy – at the expense, that is to say, of what in previous centuries would have been called "the liberty of the church" – but they recognised that they could not go too far without undermining their own position. This explains why the English government, for example, encouraged anti-Papal legislation in detail, but drew back from a more general attack and especially from anything with a subversive tendency. King and aristocracy became the chief supporters of conservatism in the church.'<sup>360</sup>

When Popes or Commission tried to claim political symbols of office that normally belonged to the national leaders and tried to impinge on important national issues and vested interests like the CAP then crisis loomed and compromise resulted. Informally, Popes and Monarchs like the Commission and the MSs were often developing closer contacts and supporting each other. This is what happened with Emperor Henry IV and Pope Gregory VII before the latter threatened the Emperor's powerful vested interest, the imperial bishops. This is much like Hallstein did with the French farming lobby and de Gaulle.<sup>361</sup> Hallstein was very aware of the importance of the CAP for France and de Gaulle (29% of the population in 1949-50<sup>362</sup> were involved in farming, many of these would have been catholic conservative voters) and seemed to want to use this as a lever to achieve majority voting and EEC power. The trouble was and is that the new organisations 'on the block' as the Americans would put it, wanted political power too in order to achieve their ends and tried for it again and again. The final decline in conflict between the Monarchs and the Popes was due to some changes in the system. We are told that the majority of Schisms happened in the first hundred or so years of the church; their

<sup>360</sup> Southern R. W. *Western Society and the Church in The Middle Ages*, (1985) Harmondsworth, Penguin Books Ltd p.51-52

<sup>361</sup> See note 13 Edwards: Spence (1997) p.6

<sup>362</sup> Wallace the transformation of Western Europe p. 37

decline coincided with the emergence of a properly organised College of Cardinals<sup>363</sup> and the growing governmental self sufficiency and confidence of the Monarchs. Also the Popes became steadily more concerned with running the Papal States and general mundane governmental business and less with grand political enterprises.<sup>364</sup> Gradually Papal business increased but not Papal power.<sup>365</sup>

The fragmentation of the primitive unity of the Pre Reform Papacy world, dominated as it was by Monarchical forces and Monarchical leadership of the Church, into a new Papal Church sphere governing certain aspects of life in the whole of Christendom, and a secular Monarchical world controlling the rest on a national basis, resulted in a range of new 'authorities'<sup>366</sup> that could flourish in the new environment. A specialisation of tasks in all of the medieval actors then took place. The Agreement at Worms in the twelfth century between the Empire and the Popes, which effectively allowed churchmen to work for the Monarchs in their administrations whilst owing spiritual loyalty to the Popes, set the tenor for the future. The new governmental balance and its inherent tensions, rifts and cleavages allowed and encouraged large numbers of lawyers and officials to enunciate on the differences and elaborate on the sparse legal fabric, furnishing it with ever more detail, clarity and sophistication for a while but finally leading to complexity and confusion. This state of affairs had much to offer the Monarchs and church for a while, in terms of governmental and legal density. Fundamental aspects of government like taxation, organisation and policy making were developed and fine-tuned during this period. However, the Monarchs had gained many of the governmental skills they had previously lacked. Domestically unity had been achieved often with the assistance of Papal and church resources, and the Monarchs were in a sense able to be independent. A steady build up of secular governmental resources and ideology had taken place which made absolutism possible.

The irony is that gradually the teacher of the Monarchs, the Popes, had become less of a teacher, with the ability to discipline politically, and more of a competitor on their level whilst the Pupil Monarchs had learnt the lessons of the Popes well enough to set themselves up as 'mini Popes,' from a governmental perspective within their borders, as divinely appointed Monarchs. The old Imperial ideology had been revived and modernised, thanks largely to the Papal government. Domestically they did not need the Popes any more, certainly not on a political level. Popes and the Curia had become increasingly politically malleable by the Monarchs and secular authorities. The overall trend was that at first many civil servants retained their clerical office and title but now under the authority of the Monarchs, and Papal supremacy claims became more and more a facade. Over time even for civil servants, clerical status was stripped away as the church became a religious organisation and the civil servants secular or rather obedient servants of the new religious authority the divine Kings or the glorified state.

Reform and accountability were stubbornly resisted by both Popes and the Commission (supported it must be said by the MSs /Monarchs). The Popes wished to keep their absolute power no matter what the cost and what fragmentation this resulted in and the Monarchs seem to have been interested in maintaining Papal effectiveness even at the cost of reform. The Great Church Councils which could maybe have brought about a pretty democratic (for those times) parliament for Europe, were first and foremost concerned with power and institutions and not the underlying malaise in Christendom caused by Church taxes, Canon law complexity and

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<sup>363</sup> See note 360 Southern (1985) p.155

<sup>364</sup> *ibid* p.132

<sup>365</sup> *ibid* p.135

<sup>366</sup> Cities and their merchants, nascent 'Nation States'



the general confusion and excessive output of 'Papal' goods: excommunication, indulgences, canon law, etc. This excess production had led to inflation and a devaluing of these 'goods'. Real church power had become greatly centralised and governmental-executive growth was incredible in terms of armies of well educated civil servants of kings and Popes.<sup>367</sup> Indeed many considered that there was a secular executive conspiracy going on.<sup>368</sup> Papacy and Monarchs were considered by many hand in glove and; 'secular motives were everywhere uppermost and everywhere prevailed.'<sup>369</sup> Executive power was on the up as its resources grew enormously and the difference between the political actors in the face of this steady executive power increase seemed negligible.<sup>370</sup>

The old struggle with the Monarchs had continued over the centuries since Pope Gregory VII's Papal supremacy claims had been made and it is stated that the Papacy had lasted as long as it had done owing to the College of Cardinals reflecting the worldly political forces of the times and particularly during the election allowing these a deciding role.<sup>371</sup> But this delicate balance and weaving of various interests together to form a common whole, more or less acceptable to all, was unravelling. The central role of the Papacy as bringer of government, order and prosperity and peace had been steadily undermined as Monarchs happily accrued the governmental resources they needed to run their countries more efficiently and to undermine their aristocratic opponents. Papal taxation and church benefices had been steadily taken over by Monarchs for their own personal interests. Levels of taxation had occurred which would have been utterly unacceptable had the Monarchs tried to force them through themselves. Popes had accepted this as part of the implicit bargain for their clerical supremacy. Increasingly though the Monarchs were becoming aware that they could happily use the Papal system to their own advantage; ' . . . there were already signs that the Papal system of government was beginning to produce its own anti-bodies . . . Conspicuous among them was the secular ruler operating for his own ends within the Papal system.'<sup>372</sup> Monarchs were good at ensuring that top churchmen, presumably Cardinals were their choice, and finally they could enjoy all the benefits of governmental resources without the political problems of an increasingly ineffectual partisan Curia which ironically had lost its value as it lost its independence; a result also of the Monarchs deliberate interference in it.

Over elaboration, random - informal delegation, complexity, fragmentation and lack of unity and coherence were the final trends which broke apart the unity of Christendom. It is said that the sheer amount of canonical and now secular legislation was suffocating:

'All forms of government had grown rapidly in the last two centuries, and in many areas of government a degree of complexity had been achieved that had a suffocating effect on the conduct of business. Various causes contributed to this result. In the first place, the ease with which an army of officials could be maintained on ecclesiastical endowments had encouraged the expansion of government beyond the limits of effective action . . . Arising from this, the tendency for judicial business to become increasingly complicated created a need for more officials, who in turn created more work. The Papal government suffered from all these symptoms of over elaboration.'<sup>373</sup>

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<sup>367</sup> See note 360 Southern (1985) p.131

<sup>368</sup> *ibid* p.131

<sup>369</sup> *ibid* p.131

<sup>370</sup> *ibid* p.131

<sup>371</sup> *ibid* p.156

<sup>372</sup> *ibid* p.134

<sup>373</sup> *ibid* p.134

The example of two important Papal instruments; the excommunication and the issuing of forgiveness from sins in the form of indulgences, sort of influential and lucrative medieval church 'sectors' to use modern parlance, show that both were vastly over used and had lost value; 'Another sinister feature of the documents of 1244 were the indications that excommunication had been overplayed and was losing effectiveness.'<sup>374</sup> The issuing of indulgences had started out as the right of the Pope alone, owing to his plenitude of power, finally though the right to issue them was possessed by confessors and seemingly local churches. The whole process was one of issuing authority fragmentation and then over use: 'The propensity to carry every innovation to its limits and to elaborate every conceivable detail was fully satisfied in these developments. There were remissions at the hour of death; remissions for a single danger of death . . . '<sup>375</sup> Amusingly enough the Pope ended up suffering from the fragmentation of the system and had to compete with lots of local church authorities in offering remissions of sins in connection with jubilees.<sup>376</sup> What had started out as a positive development offering solace to many in fear of eternal punishment became a farce:

'Thus the Papal activity was associated with hope, confidence, and control. But after 1300 there began a process of over-elaboration and confusion, not indeed caused by any special moral or intellectual failure on the part of the Popes, but by the relentless pressure on every side to drive the system to its limit. In the process, the hope of the earlier period became dim, the confidence was shaken by confusion and finally doubt . . . '<sup>377</sup>

Re-organisation and bureaucratic efficiency rather than necessary radical reform resulted from the various crises of the Papacy. The final arrangement of the Council of Trent in the sixteenth century merely confirmed the process of bureaucratisation that had been continuing steadily for the last few Popes although the position of the Cardinals at the head of congregations (Papal ministries) reflected a marginal improvement in their position when compared the period immediately preceding the crisis of the reformation.

The fragmentation of the Curia and Christendom, which it could be argued had resulted from the excessive size and centralising tendencies of the Avignon Papacy, had led to ad hoc, de facto, power devolution, with Cardinals and others acting in the Pope's name and logically without accepting the responsibilities that would have and should have been attached to this use of power. The result was seemingly uncoordinated efficiency with the Papal mission and unity ignored, and corruption and alienation of the institutions from the masses. These individuals and many lower levels of the clergy faced ever more effective taxation and saw that their representation was diminished with clerical prebends being increasingly handled like goods, and some rich individuals holding many and cashing the tithes without doing a thing for their flock. The flocks were getting fed up with being fleeced particularly given that they were increasingly religiously articulate. The similarities of the above with the current situation in the EU should be readily apparent in terms of excessive amounts of legislation and bureaucratic efficiency combined with excessive complexity, elaboration and fragmentation nationally and sectorally rather than radical reform.

With the Church Councils of Constance and Basle there was a very real possibility that a radical reform of the church and Papacy could have been effected. There was a constitutional window of opportunity which Monarchs had agreed to and the many representatives of the church and secular powers could have broken free of their conservative predispositions and

<sup>374</sup> See note 360 Southern (1985) p 134

<sup>375</sup> *ibid* p 137, 139

<sup>376</sup> *ibid* p 142

<sup>377</sup> *ibid* p 142-143



agreed the necessary changes. Had this happened, Christians, defined in the political manner of the medieval period, would have achieved representation in a parliamentary setting, which would have held great legitimacy and credibility. Monarchs would have been absorbed into this new constitutional set up, as important members but not the only ones. Small countries and regions would probably have retained more independence within this structure headed by a benevolent Papacy. After all countries like England and others had played the card of becoming Papal fiefs successfully enough before in order to retain territorial integrity.<sup>378</sup> Unfortunately no agreement was reached and changes were not made. The fragmentation of Christendom into Monarch led national churches and countries resulted from the over elaboration and complexity of the system clogged as it was with empowered actors and procedures. The Papacy lost its sense of mission and became like just another country concerned with secular matters. The Schism represented the last great opportunity that the European Papacy had to recover its initial mission via a radical demos creating act; creating a pretty democratic parliamentary government for Europe. The irony is that the essential losses of sovereignty had already taken place and that the main actors Cardinals and Popes were fighting for what they had already lost. The trends were for Monarchical power and national churches. The Popes and Cardinals had together alienated too many for too long to be able to recover their position alone.

Monarchs and MSs shared/share their problematic relationship to their nationals in the supranational organization in question; on the one hand they want them to be neutral but on the other there is a great temptation to try and win unfair advantages by way of them. In the Schism, the Monarchs were on the one hand, initially at least, unwilling to openly support the Cardinals when they appealed for their support. The reasons given were quite clear, that Monarchs were not interested in a fragmented Curia. Of course not, the power system of that period was built around the Papal Curia and it was an essential element in the foreign and domestic policy concerns and considerations of the Monarchs and regional powers. A major upheaval in the church could have had negative effects on their own power; the revolutionary tendencies of their populations were becoming all too clear in the aftermath of the plague. And yet they equally saw the advantages of securing as much national influence over the Curia as possible Cardinals obviously included. Monarchs increasingly browbeat, dominated or tried to dominate the Popes.<sup>379</sup> The French King seemed to have hoped that he could reinstall the Papacy back in Avignon and secure a French Pope who would reflect French interests more than the new Pope seemed to have done.

Cardinals, often with regional loyalties and networks, acted increasingly and unofficially to further these rather than to pursue universalist, official goals. Weak political leadership saw power devolve downwards to them and away from the Pope. The great Schism was initially more about institutional power and wealth than anything else and it certainly had nothing much to do with reforming the church. Cardinals each had areas of competence and also seem to have had close, too close in fact, links to certain secular regions and related powers and no doubt church authorities. The exchange of money and patronage via simony (the purchase of church positions) seems to have been the norm as allegations of corruption, over closeness to regional powers were made against the Cardinals. Their generally arrogant behaviour towards the then newly elected Pope seems to reflect their perceived sense of importance and power. There are statements that some of their number had quite deliberately abused their positions for personal aggrandisement; the French–English war was said to have been deliberately prolonged by the Cardinal concerned to allow him to keep accruing wealth and no doubt a position of importance as the mediator in this conflict. Their loyalty was seemingly more influ-

<sup>378</sup> See note 360 Southern (1985) p.148

<sup>379</sup> *ibid* p.154

enced by their links to various regions and wealth generation than it was any concept of the universal church. There is a sense that they were more than ever wanting to compete with their noble cousins in the aristocracy for power. In fact their main desire was to keep or increase the positions of power that they had illegally built up during the Avignon period, and to institute an oligarchy and to remove the Monarchical unity of the Papacy that had been there before. This is a situation similar to that which Mintzberg described when an organisation becomes stricken by 'politics,' then it is in danger of pulling apart; '... means of power technically illegitimate, often in self interest, resulting in conflict that pulls individuals or units apart.'<sup>380</sup> They were even prepared to risk the universal unity of the church by appealing to Monarchs for their support against the Pope. Before there had been splits between Cardinals leading to Schism about religious issues, this however was purely to do with institutional power.

The second issue of the Schism was also nothing to do with reform or rather only indirectly related to it. The issue was where the wealth and patronage of the Papacy should be situated; in Avignon or in Rome. The Roman population and Italian Cardinals wanted the crumbling churches and city to receive a boost by having the flows of church wealth redirected through it again. Not surprisingly the French Cardinals were more in favour of staying near their well established power bases and networks in Avignon. They had the wealth of the church well under control there and plenty of connections and were closer to their secular regional power bases. The numbers of French Cardinals had increased considerably during the time in Avignon and the French networks seem to have flourished and plenty of wealth exchanged hands between the Monarch and the church. Thus the Papacy increasingly split along national and regional lines with blocks of Cardinals representing these. The following quotation reflects this and the importance that this had for the western church:

'It was only with the growth of national blocks among the Cardinals in the fourteenth century that the system of election established in 1179 proved inadequate to the task of holding the western church together. The renewed period of schism from 1378-1417 foreshadowed the national divisions of the reformation.'<sup>381</sup>

The Papacy lost its supranationality de facto whatever the appearance of unity that remained. The Church Councils with their voting in nationes confirmed the new reality of a universal church increasingly thinking in terms of nations and countries rather than as any universal city of God. Whilst it is true that Cardinals and even Popes seem at times to have still thought in terms of the universal church the perceptions of many of the Monarchs of the period were quite clear; the Papacy had become a too French thing; 'In England they had a saying, "The Pope has become French and Jesus English."'<sup>382</sup> This scepticism of Papal independence and universalism came to be linked to the logical corollary that it was impotent to resist a powerful Monarch as happened with Boniface VIII. Real power resided with Monarchs and no longer with the church. There are signs that this perception was shared by clerical hierarchies which came to see themselves as better served by Monarchs than by the Pope.<sup>383</sup> The Papal Curia became a good place for Monarchs and their representatives to do business,<sup>384</sup> which indeed years of channelling resources into had made inevitable, but it was no longer the power centre.

<sup>380</sup> See note 235 Mintzberg (1989) p. 237

<sup>381</sup> See note 360 Southern (1985) p.156

<sup>382</sup> Tuchman, B. *A Distant Mirror the Calamitous 14<sup>th</sup> Century* (1978). New York, Ballantine Books p.250

<sup>383</sup> See note 360 Southern (1985) p.135

<sup>384</sup> *ibid* p.133



The international system of the medieval period saw territorial and matching governmental changes. Two curious developments seemingly resulting from the presence of the Papacy. The first was that previous unity of the Empire gave way to a new situation owing to the Papal - Imperial rivalry; 'In Germany, Italy and Poland the opposite was happening: power was being devolved from the centre to princes, communes, and duchies.'<sup>385</sup> The second was that Nation States were being developed from the weak Monarchies of England and France amongst others. The answer as to why some larger units were forming whilst others fragmented lies in part in the attitude of the Papacy to them and theirs to the Papacy. The Popes had been fixated on the Empire as the secular power worth competing with; England and France were even encouraged by the Popes to support them in their wars with the Emperor. England and France were in a better position to quietly take over their church based government bureaucracies, no doubt with tacit Papal acceptance, to support their statehood ambitions more than the Empire which had too openly opposed the Papacy. Latin Christendom had greatly expanded to cover most of Europe and parts of the Middle East too.<sup>386</sup> There was a 'network of parochial control spread throughout Christendom'<sup>387</sup> and expanded Papal government to match it. The number of more or less independent secular authorities had expanded and whilst this number would be modified by 1500 it was still considerable. Christendom had effectively enlarged internally and externally. The pressure had mounted from the Avignon period for Cardinals to have more governmental say particularly given their growing link to secular authorities. After the Church Council period several things became noticeable, ever larger numbers of Cardinals,<sup>388</sup> and greater inequalities between them depending on their secular sponsors. The links between secular powers and Cardinals became ever closer and more explicit, as rulers expected and wanted Cardinals to represent them. The increase in the number of Cardinals is due to several factors but one of the most important was the Papal desire to satisfy secular Monarchs' requirements.<sup>389</sup> There was fragmentation and growth in Cardinal factions and networks,<sup>390</sup> which can be summed up in the following quotation:

' . . . exacerbated the tendency of the Sacred College to fragment into networks of clientage which modified the traditional dynamics of its internal factions. Fed by numerous benefices which could not be conferred or redistributed without the permission of local sovereigns, the networks that criss crossed the sacred College like spider's webs tended to look outside Rome for support, to the great ones of the earth. And it was in the interest of all these great ones to spend money in order to penetrate the ever shifting factions amongst the Cardinals, seeking thereby to influence the policies of the Roman Church and Papal elections.'<sup>391</sup>

The end of this development resulted in sovereigns really having considerable control over 'the highest ranks of the church,'<sup>392</sup> and also 'Papal centralism.'<sup>393</sup> More powerful rulers had

<sup>385</sup> Morris, C. *Papal Monarchy* (1991) Oxford, Clarendon Press p.550

<sup>386</sup> *ibid* p.580

<sup>387</sup> *ibid* p.580

<sup>388</sup> Pellegrini, M. 'A turning point in the history of the factional system in the sacred college: the power of the pope and cardinals in the age of Alexander VI', in G. Signorotto and M.A. Visceglia (eds.), *Court and Politics in Papal Rome, 1492-1700*, Cambridge, Cambridge University Press, 2002, p.24. 'Weakened by an enlargement which reduced each individual's share in the division of incomes and benefices, and further weakened by a policy of promotions that was entirely alien to its corporate interests, the Sacred College suffered from an ever increasing internal imbalance.'

<sup>389</sup> *ibid* p.17. '...Sixtus IV inaugurated in grand style the practice of promotions to the Cardinalate as pledges of alliance with secular sovereigns, especially Italian ones. This was a practice which, by opening the doors of the Sacred College to an important nucleus of Cardinal princes, diminished the spiritual authority of the Cardinalate as a whole and aggravated the tensions and inequalities within it.'

<sup>390</sup> *ibid* p.23 'Fragmented and riven with contradictions, the Sacred College under Alexander VI experienced all the trials and tribulations of an age of transition...'

<sup>391</sup> *ibid* p.24

<sup>392</sup> Guarini, E. *Rome, workshop of all the practices of the world: from the letters of Cardinal de' Medici to Cosimo I and Francesco I* in G. Signorotto and M.A. Visceglia (eds.), *Court and Politics in Papal Rome, 1492-1700*, Cambridge, Cambridge University Press, 2002 p.58

more Cardinals and provided them with more wealth to form alliances to get things done.<sup>394</sup> At the same time that secular rulers increased their presence via the Cardinals and of course as the number of Cardinals made them less viable as a governmental organ so the Pope increased bureaucratisation processes in the rest of the Curial organisation and introduced innovations which circumvented the unwieldy Cardinalate.<sup>395</sup>

The enlargement of the EU saw the numbers of Commissioners increased steadily. Furthermore EU policy making has been increasingly influenced by fragmentation and DGs competing for various resources. The tendency of policy fields to be dominated by Policy Networks has also become seemingly clearer. The same goes for the pressure on the Commission to reform and its decision to bureaucratised. There are of course plenty of differences between the medieval period and that of the research but the incidence of these common factors is interesting. In particular since the result of the Papal organisational developments and lack of major constitutional reform was the reformation and split in Christendom. A warning that if the enlarged EU fails to change constitutionally then in the short term Commissioners will form alliances; new bureaucratic mechanisms may be sought to get around their excess numbers; Policy Networks may well become even more dominant and the Commission find that, as Monnet feared it might, that it is strongly influenced by MS actors in sectoral Policy Networks. Finally there is the possibility that a crisis of faith in European supranationalism could follow much as we saw with the European Constitution and result in its rejection on a grander scale than ever, and-or that the multi speed Union will result in regions splitting off.

Both Papacy and EU assisted in the transition from one governmental system and related structures to another. The Papacy acted like an inoculation for the medieval world and as stated under the theory chapter also improved the medieval economy; modified secular depredations and tried to reduce the internal warfare that plagued Christendom. With increased trade, more economic activity and Papal governmental skills came greater taxation possibilities allowing for more employment of officials working for Kings and Popes and so more and at first better government. The Papacy was in fact too good at breaking down previous structures and missed the opportunity of heading the mass of new states that emerged from the Empire and of course the new Nation States like France and England. It had the possibility of heading a loosely structured European governmental organization which might have held the whole together and even over time formed a stable European government with limited competences. Instead it chose to try to maintain its claims to supremacy made during the Reform Papacy and to refuse reform and reorganization and chose bureaucratic tools and centralisation. It rejected the moderate form of democratic parliamentarianism that could be seen in the Church Councils.

It was successful at its outset owing to it serving the purposes of the bishops and others in the church who were desperate for a new system which was free of war and which weakened secular predations and dominance. The bishops and other clergy were the major vested interest which allowed the claims of the Reform Papacy to have some chance of success. The toning down of the strident claims of Pope Gregory VII allowed Monarchs to quietly find a working relationship with the Papacy. It was only once both the clergy and the Monarchs found that they could get along perfectly well without the Papacy that it was in real trouble. Alienation of both lower clergy and a more articulate populace did the rest combined with obvious impotency, excessive costs and corruption. In an environment stricken by fragmentation, ultimately splitting geographically, politically and in terms of religion and its role; the Papacy failed to

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<sup>393</sup> See note 392 Guarini, E. (2002) p.58

<sup>394</sup> See note 388 Pellegrini, (2002) p.25

<sup>395</sup> *ibid* p.22. 'The extension of the Papal datary's bureaucratic functions during the pontificate of Alexander VI



reform and was back staged. The force that had helped unite Christendom and medieval 'Europe' finally achieved the opposite.

The ECSC and EEC were successful at the beginning because they were respectively seen as a lesser evil for the MSs to the danger of other MSs in terms of war. As long as the MSs were obsessed with fighting each other and stuck in the traditional approach to seeing things then the Commission was safe, an ally, a useful construct to serve MS interests. MS mutual mistrust was the root of Commission success. But as soon as it was active politically and claiming symbols of state then the problems emerged for it. It was recognised as a MS competitor<sup>396</sup> and dealt with politically as such by de Gaulle, much as finally the German Emperor did to Pope Gregory VI when he employed military means to hunt him out of Rome. At first the ECSC and EEC served the interests of various groups, including the MSs, who saw opportunities for themselves.<sup>397</sup> The loss of Episcopal support for the Papacy helped weaken it and finally bring down the Papal Monarch. The growing antagonism towards the Commission shown by its traditional allies France and The Netherlands (in the 1992 referendum and for the latter in a falling turnout for the 1994 European election<sup>398</sup> quite apart from the recent European Constitution crisis) and the apparent belief amongst some MSs that the Commission is no longer necessary bodes ill for the project.<sup>399</sup> Maybe the MSs really have changed enough, learnt enough not to need a neutral, objective Commission anymore, maybe that is what they think. That said what follows seems to cast doubt on the MSs ability to go it alone. There are even disturbing signs that opposition to the Commission is becoming more usual; the opposition to it shown by the service sector industries affected by the planned legislation in that field and the recent 'outbreak of economic nationalism' in relation to the energy sector, in fact the basic four freedoms, its foundations seem to have come under attack.<sup>400</sup> These setbacks combined with reductions in the EU budget, curbs being placed on legislation generation and the promotion of other means of regulation are serious blows to the Commission, maybe more so than the constitutional debacle. If the Commission and EU follow the Papal model and simply increase bureaucracy and continue the cycle of strife like the MSs and Popes did, then finally the result may well be a split of the EU. It would be another missed opportunity.

One final point is that both Commission and Papacy came in with reform movements aimed at the removal of negative secular-MS activities, claiming the moral high ground and the necessary independence to stay there. They offered the solution to vested interests be they sectoral ones or Episcopal, aristocratic ones. However, over time the Papacy slackened and relaxed its drive against the secular authorities and vested interests and instead behaved like one itself. Much the same seems to have happened to the Commission which has over time come to protect vested interests in the areas of CAP, SF and in terms of the sectors. It fights to resist reform, as its DGs fight and resist Commission reforms, and refuses to even consider changes to its perspective on governance, as the recent governance white paper showed.<sup>401</sup> There is also considerably more MS involvement in its organisation and the EU as a whole. There is a real sense that the Commission is gradually losing its independence and being seen to do this. Newcomers to the system like the NMSs were faced by sectoral actors deciding policy rather

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<sup>396</sup> See note 335 Drake (2000) p.247

<sup>397</sup> Ziegler, D. *War Peace and International Politics* fourth edition. 1987 Boston, Little, Brown and Company. p. 386

<sup>398</sup> See note 13 Edwards: Spence (1997) p.4

<sup>399</sup> Peterson, J. *The College of Commissioners*. in Shackleton M and Peterson J (ed.) ; *The Institutions of the European Union*, (2002) Oxford, Oxford University Press p. 92. 'At times, it appeared that EU governments no longer believed there was a need for a strong Commission which could act as an independent, honest broker between national interests.'

<sup>400</sup> *The Economist* 27.05.06 p. 22 'This means, above all, safeguarding the single market and its competition rules. A nasty outbreak of economic nationalism struck earlier this year, when several countries started to talk of fostering national energy champions and of protecting their biggest companies from foreign takeover. This must be beaten back. Indeed, much work is needed to bolster all the EU's four freedoms...each of which has been under attack this year.'

<sup>401</sup> See note 2 Kassim; Menon (2004) p.101

than EU political authorities and the Commission with regard to European Agreements and in other areas too. Maybe it is time for the Commission to change and so avoid the Papal fate of becoming a force for conservatism rather than reform, and finally a play thing for Kings or where the Commission is concerned, the MSs. These are all too happy to dodge reforms and remain in power; their legitimacy is not as fragile and dependent on independence, perceived objectivity, reforming idealism and zeal.

The medieval papacy during its heights of power expanded its control over the church and Christians to an extent that would have been unheard of in earlier days. The EU is gradually expanding to include governmental areas which would have been considered clearly political before and requiring the assent of the national parliament with its simpler legitimacy. The EU citizen wants to understand the project which is encroaching into their life and they want to have a share in it. But the complexity of the EU which appears contrived at times as with the lack of real ministerial accountability and comitology committees requires that the citizen leave it to the experts, (Comitology committees were created by the MSs to prevent the Commission altering policy as it implements it, they supervise the execution of EU policies. The EP is excluded from comitology committees where the bulk of administrative decisions in the EU are taken and the majority of decisions are administrative). After all the citizen cannot hope to understand such complicated matters. But presuming ignorance and therefore limiting the citizens' rights to control the organisations which are increasingly controlling them is just what made the Christian citizen of the church 'state' finally rebel and demand that their church be made understandable and experts removed from their positions of power. It is quite possible to imagine a simpler more accountable form of EU government and this would be an improvement on what is currently in operation. The citizens particularly in the Northern European states are used to greater transparency than they have with the EU and rightly suspect that the executive arm is benefiting at the cost of the parliaments. They are unwilling to give legitimacy to a system which could be improved upon.

## **9.10 RECOMMENDATIONS**

### **9.10.1 CONCLUSION SUMMARY**

Growth in: Policy Network and executive power, EU and Commission fragmentation, lack of effective political leadership in difficult economic periods are reasons enough for a major reform. Excessive legislative output and economic costs are seemingly accepted by the MSs and Commission as reality and a reason for changing procedures and trying to reduce bureaucracy, quite apart from public disillusionment with the European Project. But the likelihood is that little will happen. The problem of accepting responsibility, that essential of DP, is lacking throughout the EU. MSs blame the Commission as it suits them; the EP at times joins them; the Commission unsurprisingly passes the buck internally. Essentially there will be more EU activity in all probability, and the Commission is needed to play its part in this, but in the current form of EU and Commission, this will lead to major problems as already stated. Both must be reformed before they are given greater powers via a constitution, but major reform seems to be routinely resisted. Rationality is required in the EU, powerful groups of bureaucrats and diplomats like COREPER and areas of decision making like that of comitology must be simplified and brought back under the obvious control of DP. If more DP were introduced and simpler lines of responsibility and accountability were decided on then more citizens might associate democracy with the EU. Reform is vital, or rather reorganization but. . . . Real reform and change simply rarely if ever happen, sadly. The Sapir report pressed for changes in Structural Funds and CAP in the budget but Commission failed to act on it:



‘There is no question that the EU budget is broken, whether or not member countries manage to reach a deal at this week’s summit. There is equally no question that a more rational budget would require huge changes in the pattern of spending and in the sources of finance. The Sapir report urged radical reform, but true to form the European Commission took the report, said thank you, and put it in the back of the drawer with the best linen, never to be used. Shame.’<sup>402</sup>

The institutional competition between the Council and the Commission has reached a stage where it is in danger of damaging seriously the achievements of the past:

‘The Member States’ assertiveness, their determination to circumscribe the Commission’s power and impose their control, may hinder the ability of the Commission to carry out tasks that are crucial to the effective functioning of the system as a whole and may ultimately prove counter productive to their own interests.’<sup>403</sup>

Currently the lack of a formal opposition in the EU, such as exists constructively in MS parliaments, seems to have some malignant form in Brussels with various institutions openly opposing each other.<sup>404</sup> Unfortunately, constructive opposition on various policy issues which is the normal parliamentary approach happens less than opposition simply owing to suspicions about the other organisation, essentially struggles about political leadership. It is unclear which institution leads, whatever the rhetoric. The more formal institutional dead lock and competition there is, the more real power will continue to seep down into the informal Policy Networks, which without political leadership might opt for inertia or more uncoordinated, overall incoherent activity. The competition between Commission and Council is not useful and damages Europe and legislative consistency. There should be competition between one set of political masters and the parliament. What is needed is a new system with the executive under Parliament, and struggles over policy contained in the parliamentary structure.

Using the immunisation analogy, the further the European project enters the host(s) and it becomes less economic and more obviously political the greater will the DP opposition be. The more glaring will seem the lack of DP and the wrongness of an unelected bureaucracy deciding issues so much closer to the average voter. In that sense the vaccine has been quite effective, it has reached deeply into the host(s). The political elites which have allowed this situation to come about and seem hand in hand with it will suffer also. That the voter facing the fragmented, complex EU with its problematic democratic system, grows more suspicious seems not just expectable but almost proof of the correct democratic instinct which is in every voter. The more political and close to the voter the EU comes, quite rightly the more the voter should be empowered and have a right to decide. Many political elites recognise their DP responsibility and that this is the next DP stage and that referenda are a must and not a choice, and referenda can be convenient too. Few leaders have ever made it clear that they were being voted into power to effectively reconstruct their domestic political system in favour of a European one. This issue is far too important to be tagged onto the small print of a manifesto and then declared to have received a mandate. It must be overt, clearly labelled and there must be a real choice and real opposition to ensure real debate. The mixing of policy discussion with political system discussion happens all too frequently in the EU context, if for no other reason than this is how the EU actually is internally. It is constantly struggling to find a new balance between dissatisfied institutions, similar to the struggles between Popes, Cardinals and Mon-

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<sup>402</sup> The Economist December 17, 2005 p.36 Charlemagne a modest proposal.

<sup>403</sup> See note 2 Kassim; Menon (2004) p.102

<sup>404</sup> See note 19 Peterson; Bomberg (1999) p.20

archs over institutional competences, rather than discussing the threat of a reformation. This has to be brought to a close; it is hard for any voter to find any sort of allegiance to a constantly changing, vague governmental set up. Indeed there cannot but be a suspicion that some MS politicians have wanted to keep it this way.

Future referenda are likely to remain negative as they have been for much of the nineties, initially at least. Demanding re-votes until the elites force the answer they want has an undemocratic feel about it<sup>405</sup> which will weaken the voters' attachment to the project further still. Indeed this notion about the deluded voter who is incapable of voting properly and is so easily misled is essentially as problematic<sup>406</sup> and undemocratic. The statement the authorities want to hear, which is of course the right one from the authorities' point of view and the answer they knew all along, will be we agree. That the answer will have little to do with truth but rather better selling techniques or voter apathy is obvious, and the main success is to devalue referenda in general and DP as well. From the perspective of this thesis, the Monnet Method has reached the end of its useful life and is opposed by DP from the total body politic of the hosts, their voters in referenda. Finally the essentially undemocratic reality of the Monnet legacy EU must be transformed into a fundamentally democratic version. To oppose the voters would be to let the 'pathogen' take over, finally, and to become a real disease rather than an immunisation. Somehow it would appear that Monnet would have chosen to side with the voter if he could see the EU currently. The critical mass that he appeared to desire has arrived and change is a must.

#### 9.10.2 CONCLUSION RECOMMENDATIONS

The EU must be altered and the Commission's position in it. The hostile environment which gave rise to its multi faceted unique organisational structure needs to be formally restructured to be more in line with the current needs and reality of Europe. Some of the Commission's confusing aspects, which are problematic for it too, could then be removed. Its rigid complex bureaucracy dating back to the 1950s is an anachronism and serves little purpose apart from protection within the cycle discussed. The Commission would be better off specializing again, dropping policy management which it is not good at and also dropping the attempts to control policy implementation and simply concentrating on policy generation and the think tank processes surrounding it. Thus reform must involve a fundamental rethink of the project, its goals and assumptions and its organisational specializations.

The Commission vaccine has succeeded in many ways in creating, or provoking the necessary elements for a new European government. European wide sectoral power naturally resides in the Policy Networks which DGs or elements in the DGs have created or encouraged and at times lead. These should be formalised and rationalised; they are, to an extent, the natural governmental arms issuing from Brussels to the would be federally organized states. The problem is that the Commission lacks the political status, authority and power to control them, and over time they have come to over control it. As things stand Policy Networks and executive power will dominate in the EU and democracy, accountability and efficiency will suffer. In fact Monnet's ideal Commission is suffocating in its current organisation and the present EU. The bureaucratic disease and sectorisation which afflict the Commission and the EU are the result finally of the Commission's unwillingness or rather inability to keep to his principles, combined with the hostility of DP-MSs. He expected the Commission to have a stronger ability to prioritize; so that as the MSs lost control over their sectors so the Commission should have taken over the control. The hostility between the environment and the Commission

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<sup>405</sup> The Economist 27.05.06 p.22-23

<sup>406</sup> See note 95 Shackleton; Peterson (2002) p.349



should end and a synthesis emerge and finally allow the vaccine to find an organisational form that lets it unfold and necessarily transform as its RNA are fully integrated into a European governmental layer that compliments much of its mission and elements. Thus traditional European-wide DP must be put into force; sectoral bureaucracy left to Policy Networks and a Monnet ideal Commission set up to creatively organise, prioritise and advise an elected European government. Then the ideals of both DP and the vaccine would be met and the vaccine have reached enough of its goal to cease activity.

For the new EU whole areas of current EU concern should be re nationalised. The CAP and CP for example could very easily be removed from the EU budget and this money be allocated to research and education for example. Possibly the process of transferring policy areas from the intergovernmental second and third pillars of the EU construction to the supranational first pillar should be continued, to see policy areas then returned to the MSs once they have been sufficiently modified or harmonised. Whether foreign policy and security issues should be decided by the new European government or elements of them is arguable. That said, the process is already underway of the EU increasing its activities in this area which would indicate that MSs are interested in this development and so it will probably continue. If this is the case then limits should be accepted and set constitutionally.

Now on to the discussion about the details of the new EU governmental system. The ideal Monnet style Commission has to be created and separated from the bureaucracy around it. It can be larger than the smaller number of officials he wanted as the EU is much larger now but it should retain the characteristics of flexibility, informality and expertise that he wanted. Elements of the old Method could be retained by a policy making group but restricted to some extent, whilst freed up by the removal of political responsibility and the need to compete with other institutions just because they are opposing institutions. It is time to free the staff from being the much maligned 'malignant bureaucrats' to being the dynamic forward looking policy makers and think tank of the elected European Government. The Commission's staff seem to be ideal policy makers, most are innovative, highly motivated and expert, the whole organization is geared towards innovation, moving on, changing views and evolving new policies and 'grand visions,' this last point was sometimes a problematic quality in an unelected organisation with limited democratic aspects, but indicative of what the Commission excels at. The ideal Commission form has traditionally required a dynamic leader and European ideology.<sup>407</sup> The only problem was that Commission leaders lacked political responsibility and democratic accountability. What is needed is a European Prime Minister for the Commission to serve like Monnet's organisation did the French PM.

If the basic scientific approach states that the simplest theory is probably the correct one, then the same approach should be used when deciding on a system of government for Europe. The simplest structure would be the one which has proven successful over centuries for Nation States and that is that there should be some sort of separation of powers and competencies and a democratic system of electing political representatives who scrutinise and approve laws and choose a government. This executive then sets the political tone for their top civil servants. There are of course a mass of additions to this but the basic design remains the same. Usually the number of actors and their competences are likewise limited and controllable. It is not too difficult to conceive of a form of government for Europe, if one is considered by the electorate to be necessary, with reduced and constitutionally limited competences, where relatively

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<sup>407</sup> See note 4 Spence, (1997) p.71. 'This conscious attempt to endow the Commission with a supranational ideology or mission was confirmed in the establishment of Walter Hallstein's first Commission of the European Economic Community in 1958. Hallstein was unashamed to include "theory, doctrine, utopia, forecasts, planning, futurology (and) vision" in his writings.

simple limitations of power and lines of accountability could be set in place. Given that such a system is conceivable and that it is simpler by far from the current system it would seem clear that a false or inadequate system is now in place. Democratic systems of government where power is formally shared and ordered allow for well informed decisions to be made, better than those in a dictatorship. The latter often have opaque structures with a wide range of actors competing with each other and often for the ear of a very few.

The European government should be constitutionally limited. The sectors and related Policy Networks should be placed under elected ministers chosen from and answerable to a much strengthened EP from whose number the ministers are chosen. The Council would act as a second chamber. The staff of the Commission should be allowed as much freedom to develop legislation as they have today, and be quite clearly labelled as policy developers and allowed to specialize their skills. But above all they should be above the bureaucratic work that is fragmenting the Commission currently, and rather they should be prioritizing it and setting broader conceptual frameworks for it in the future. Political leadership would be provided by an elected President of the European government, and from the voted-on manifesto would be derived the guidelines for the officials to develop policy. Subsequent additions to the manifesto arising out of the policy developer's work and discussions at the grass roots would then be put to yearly votes by the EP. The EP must be altered to ensure MEPs have a mandate they must defend and that more easily identifiable parties with clearer platforms be made.

Since the absence of a formal EP or European opposition and opposing views, leaves a rather suspect policy debate poverty, as shown in referenda with many stating the absence of an informed balanced debate, ideally parliamentary on both sides. There must be proper opposition to the ruling party in the EP and vigorous debates on issues, and not just institutions,<sup>408</sup> and along colourful party lines. Otherwise the debate will continue to be for or against Europe, removal of the whole system or bits of it. The creation of a limited, properly elected government in line with DP principles would help remove the DP knee jerk reaction, which is always to see European issues as alien and not really as valuable or democratic and legitimate as the national ones, which leads the discussion in many circles not onto a discussion of issues but rather onto the project itself and whether or not to remove it. As long as it remains a project with unclear goals and aims and unfinished then it will be treated as a temporary phenomenon by many with unsure DP value and worth and really just waiting for the moment when it can be removed, like a healer's leech. It is not until the project becomes a fixed government belonging to the people free from MSs and diplomats making the real decisions and is seen to be for the citizen and controlled by them in good old traditional DP manner that Monnet's Method can really be said to finally served its purpose and to now be at rest.

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<sup>408</sup> See note 19 Peterson, Bomberg (1999) p 20



**Dates of Interviews with the SG**

Official 1. 20.06.2004  
Official 2. 29.06.2004  
Official 3. 29.06.2004

## APPENDIX 1

### INTERVIEW METHODOLOGY

The research for the PhD was carried out using a grounded theory approach. That meant that after reading the standard theoretical literature and carrying out some in depth elite interviews it quickly became apparent that the facts so accrued required a rather different theoretical framework to explain and integrate them into a coherent whole. The other main theories that were applicable to the thesis were used where their explanatory power was greatest.

With regards to the interviews themselves they were conducted on an qualitative elite interview basis with only a written transcript taken. Most of the interviews lasted for well over three hours and the officials were guided by certain questions but a direct question and answer format was not strictly applied. As the literature stresses listening was of the utmost importance. Much of what was said by officials was stated by them to be off the cuff and they refused to have their names directly attached to it. In order to corroborate the information provided by one official other officials were then asked indirectly for information to confirm what their colleague had said. Thus if a footnote indicates that Commission officials said something, then what was said, unless otherwise indicated, will broadly have fitted into a pattern indicated by information provided by other interviewees.

Please note that since the elite interview answer sample sizes were of necessity relatively limited, the words 'appeared to be', 'seemed to be', 'was alleged that' etc, could have been used throughout the text, especially where information gathered from interviews was concerned, but were not. This was not to indicate certainty but rather for stylistic, 'readability' reasons. Inevitably scientific work of this nature retains a tentative quality as it is not natural science with laboratory techniques to support it.

To improve the objectivity of the information still further the triangulation principle was applied. That meant that different interview methods were used as well as different sources of information in order to double check statements made during the interviews. Thus the interviews with the NMS officials were carried out following a questionnaire basis although they had ample room to extensively answer some questions more than others. In terms of a variety of sources use was made of other DGs and agencies and of course the NMS officials to get different perspectives and to double check information. These were all able to comment on the information provided by one DG whilst owing loyalty to a different organization.

Furthermore as much of the secondary and primary literature available as possible was used to back up the findings from the interviews. In particular European Court of Auditors; European Commission; European Parliament; European Council; UK Parliament documentation provided useful information along with articles and books written by academics on the policy fields linked to the thesis. The documentation generated by a variety of European federations was also helpful and of course articles written in the Economist; European Voice; EU Activ; EU Observer to name but a few.



## LIST OF ABBREVIATIONS

ABM	Activity Based Management
CEECs	Central and Eastern European Country applicants to join the EU
CESDP	Common European Security and Defence Policy
CFSP	Common Foreign and Security Policy
CI	Community Initiative
CIE	Committee of Independent Experts
COREPER	Committee of Permanent Representatives
CP	Cohesion Policy
CF	Cohesion Fund
CAP	Common Agricultural Policy
COR	Committee of the Regions
CSFs	Community Support Frameworks
DG I	Directorate General Enlargement
DG III	Directorate General Industry
DG V (EMPLO)	Directorate General Employment, Industrial relations, and Social Affairs
DG VI (AGRI)	Directorate General Agriculture
DG XI (ENV)	Directorate General Environment
DG XVI (REGIO)	Directorate General Regional Policies and Cohesion
DG XXIII (SME)	Directorate General Enterprise Policy, Distributive Trades, Tourism and Cooperatives
DG (ENT)	Directorate General Enterprise and Industry
DG (SANCO)	Directorate General for Health and Consumer Affairs
DP	Democratic Parliamentarianism
EAGGF	European Agricultural Guidance and Guarantee Fund
ECA	European Court of Auditors
ECJ	European Court of Justice
ECSC	European Coal and Steel Community
EDC	European defence Community
EDIS	Extended Decentralized Implementation System
EEA	European Environment Agency
EIB	European Investment Bank
EIF	European Investment Fund
EMU	European Monetary Union
EP	European parliament
EPC	European political Cooperation
EPU	European Political Union
ERDF	European Regional Development Fund
ERT	European Round Table of Industrialists
ESF	European Social Fund
ETC	European Topic Centre
EURATOM	European Atomic Energy Community
EUREKA	European Research Coordination Agency
EUROSTAT	Statistical Office of the European Communities
GATT	General Agreement on Tariffs and Trade
HDTV	High definition Television
IAS	Internal Audit Service
IGC	Intergovernmental Conference
IMPs	Integrated Mediterranean Programs
ISPA	Instrument for Structural Policies for Pre-accession

JHA	Justice and Home Affairs
LI	Liberal Intergovernmentalism
MAGP	Multi Annual Guidance Program
MEP	Member of the European parliament
MS	Member State
OJ	Official Journal of the European Communities
NMS	New Member State
PHARE	A funding program of technical assistance for the development of private enterprise and market oriented economies
QMV	Qualified Majority Voting
RACE	Advanced Communication Technologies for Europe
SEA	Single European Act
SEM	Single European Market
SMEs	Small and Medium Sized Enterprises
SNA	Sub-National Authorities
TENs	Trans European Networks
TEU	Treaty on European Union
UNICE	Union of Industrial and Employers Confederations of Europe
OMC	Open Method of Coordination



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## SAMENVATTING

Het onderwerp van de onderhavige dissertatie is de verandering in functie en gedrag van de Europese Commissie. Veel literatuur over de Commissie is gericht op de unieke aspecten van het integratieproces en de rol van de instellingen daarin. In deze studie wordt de EC daarentegen gezien als een internationale instelling van een type dat zich ook al eerder heeft voorgedaan in het middeleeuwse Pausdom, zoals uiteengezet in "EU: Papacy Reincarnated?", dat twee jaar geleden werd gepubliceerd door schrijver dezes. Daarin constateerde hij een aantal parallellen tussen de ontwikkeling van het middeleeuwse Pausdom en die van de EGKS en de EEG. In het bijzonder de periode van de Gregoriaanse hervormingen, die rond 1054 beginnen, lieten zien dat Rome en Pausdom gegroeid waren van een bescheiden spiritueel centrum naar de politieke krachtcentrale van het Christendom. Het genereerde grote hoeveelheden wetgeving om de christelijke gemeenschap te besturen en met name de economische sectoren waarover de kerk controle uitoefende. Wereldse heersers werden in meerdere of mindere mate aan de kerkelijke jurisdictie onderworpen. De politieke ambities van het Pausdom zijn nooit vervuld en het is nog maar de vraag of die van de EEG en de EU een beter lot beschoren zullen zijn. Maar beide beoogden een integratie van de wereldse machthebbers onder de kerk, respectievelijk een Europese regering. Zowel de organisatorische structuren als de historische ontwikkelingen en het ethos vertonen een reeks van gelijkenissen die een innerlijke relatie laten zien.

In dit proefschrift is onderzocht wat de effecten waren van de in 2004 voltrokken uitbreiding van de EU op diverse afdelingen van de Europese Commissie en op de nieuwe lidstaten. De verwachting was dat deze uitbreiding de werking en spanningen van de formele en informele structuren zou blootleggen.

In dit onderzoek worden veel, zo niet alle conventionele theorieën over Europese integratie, zoals het intergouvernementalisme en het neo-functionalisme, aanvaard als partieel geldige benaderingen. Maar hoe kunnen deze alle tegelijk juist zijn? Door welk processen wordt integratie bewerkstelligd? De verschillende integratietheorieën dienen zelf te worden geïntegreerd in een overkoepelende theorie.

Bevorderlijk voor de ontwikkeling van zo'n theorie was de observatie dat de Commissie bijna alle door Mintzberg onderscheiden types van organisaties vertoont en dat deze worden gecombineerd op een wijze die praktisch onmogelijk lijkt. Dit verklaart al tot op zekere hoogte hoe verschillende integratietheorieën tegelijkertijd partieel juist konden zijn, namelijk afhankelijk van het soort organisatie dat werd bestudeerd. Maar daarmee was echter nog niet duidelijk wat organisatorische veranderingen veroorzaakt en hoe het veranderingsproces verloopt.

Het theoretische antwoord dat hier op de gestelde vraag wordt voorgesteld is een vorm van functionalisme, waarin processen in de wereld van cellen en organismen als model worden gehanteerd. Er is een zekere verwantschap met het neo-functionalisme dat aanvankelijk één van de meest succesvolle theorieën was voor de verklaring van het Europese integratieproces. De oudere functionalistische gedachte die teruggaat tot Herbert Spencer en via hem tot de oude Grieken, is in theoretisch opzicht echter veel rijker dan het specifiek op de toenmalige Europese integratie toegesneden neo-functionalisme. Spencers functionalisme had zowel betrekking op zowel cellen, organismen als ook mensen en hun sociale betrekkingen. Hij zag evolutionaire druk als drijvende, cyclisch werkende kracht achter sociale verandering. Sociale



structuren reageren veelal net als organismen op bedreigingen en op pogingen ze te beïnvloeden en te veranderen. Let wel, het gaat hier om een model dat nuttig is bij wijze van heuristiek, maar ook niet meer dan dat.

Zoals een lichaam ziek kan worden, dat wil zeggen: kan gaan disfunctioneren, kunnen zich ook met ziekte vergelijkbare processen voordoen op sociaal vlak. Oorlog kan bijvoorbeeld worden gezien als een belangrijke vorm van ziekte die het hele sociale lichaam aantast. Oorlogen ontstaan ook niet uit het niets. Vaak houden ze verband met storingen in het sociale lichaam die het vatbaar of kwetsbaar maken voor oorlog. Politiek extremisme, ideologisch en meestal ondemocratisch, is een voorbeeld van zo'n storing, een ander voorbeeld is economische instabiliteit. Beide tegelijk loopt nogal eens op oorlog uit. Nationalisme en politieke ideologieën hebben de negentiende-eeuwse Europese staten een zekere eenheid en stabiliteit verleend, maar in de twintigste eeuw namen beide pathologische vormen aan onder invloed van economische instabiliteit.

Als sociale lichamen "ziek" kunnen worden, zouden ze ook genezen moeten kunnen worden door toediening van de juiste medicijnen. Een belangrijke tak van de medische wetenschap is de immunologie. Een arts zou, de Europese geschiedenis van de eerste helft van de twintigste eeuw waarnemend, kunnen denken dat Europa een vaccin nodig had om toekomstige oorlogen in Europa te vermijden, een vaccin dat zowel de economische als de politieke oorzaken van oorlog zou wegnemen of althans voldoende zou verzwakken. Vaccins bestaan meestal uit dode virussen die milde reacties oproepen die echter lijken op die welke door levende virussen in veel heftiger mate worden opgeroepen. Die milde reacties zijn echter voldoende om afweerstoffen te doen aanmaken die een volledige uitbarsting van ziekte kunnen verhinderen doordat deze al in de kiem wordt gesmoord. Een ziek element wordt dus gebruikt om een ziekte te genezen.

In deze studie wordt betoogd dat bureaucratie vaak weinig functioneel is, met name in economisch opzicht, en dat het dan als een ziekteverwekker of als een parasiet kan worden beschouwd. Soms werkt bureaucratie echter als een middel om oorlog te bezweren. Zo kunnen veel trekken van de Europese Commissie als pathologisch worden gezien vanuit functionele gezichtspunten zoals geformuleerd door Max Weber. Functionaliteit en disfunctionaliteit zijn echter betrekkelijke begrippen. De disfunctionaliteit van de Europese bureaucratie is als het ware de prijs die betaald wordt voor de rol die deze pathogene structuur heeft vervuld met het oog op de pathologie die eerder tot twee desastreuze wereldoorlogen aanleiding had gegeven. Waarmee natuurlijk niet gezegd is dat deze bureaucratie ook thans nog deze functie vervult.

Twee krachten hebben de ontwikkeling van de EU beïnvloed. De ene is het pathogene element in de Europese Commissie, de zogenaamde "Monnet methode". Deze methode maakt gebruik van een bureaucratie met een passende ideologie om zichzelf, of althans haar invloed uit te breiden en het politieke systeem te veranderen waarin het is binnengedrongen. De Monnet methode was een doelbewuste bevordering van internationalisering van de ene sector naar de andere door de functionele relaties tussen sectoren. Het methodische ervan bestond in de beperkte, technocratisch fragmenterende benadering van de problemen, zowel in inhoudelijk als in bestuurlijk opzicht, zoals die zich telkens voordeden wanneer Europese interventie op het ene terrein aanpassingen op andere terreinen wenselijk leek te maken. De Monnet methode was en is het vliegwiel van de supranationale integratie in Europa.

De tweede factor in de evolutie van de EU was echter het democratisch parlementarisme, de traditionele, in wezen liberaal-democratische methode van besluitvorming die typerend was voor de West-Europese natiestaten. Deze had in continentaal Europa veel krediet verloren in

de periode tussen de twee wereldoorlogen. Door de overwinning van de Anglosaksische democratieën op de Nazi-dictatuur met zijn verkrachting van de voor de democratie typerende fundamentele rechten, had de democratie echter weer aanzienlijk aan krediet gewonnen. Zowel democratie als fundamentele rechten werden dan ook geïnternationaliseerd in verdragen en in organisaties als de VN en de Raad van Europa. Democratie en mensenrechten kregen daarmee de status van waarborgen van niet alleen de vrijheid, maar ook van waarborgen tegen oorlog, althans in de westerse wereld, die zich bedreigd zag door het communisme, zowel van buitenaf door de Sovjet Unie, die praktisch heel Centraal Europa onder controle had, als van binnenuit, vanwege de populariteit van communistische partijen in Frankrijk, Italië en Griekenland.

Vanwege deze externe en interne communistische dreiging leken democratie en rechten van de mens onvoldoende waarborg om West Europa deel te doen blijven van de vrije wereld, maar moest het ook een economische en militaire eenheid worden. Dit verklaart waarom het de Verenigde Staten waren die in eerste instantie aandrongen op Europese integratie en niet de Europese staten die zojuist hun onafhankelijkheid hadden bevochten (zoals Groot-Brittannië) of herkregen (zoals Frankrijk). Pas na het mislukken van het Franse initiatief tot een politiek-militaire integratie in de vorm van de Europese Defensie Unie, werd de stap gezet naar de EEG c.q. de Monnet methode, waarvan de bruikbaarheid intussen gebleken was in de EGKS.

Democratie was echter vreemd aan de Monnet methode, in principe althans. Democratische politici figureerden er op zijn best als makelaars tussen belangengroepen. Veelzeggend in dit opzicht is dat Monnet zich had afgewend van de EGKS, omdat hij teleurgesteld was dat er een Assemblee aan was toegevoegd. De technocratisch fragmenterende Monnet methode verlangt dat het centrum van politiek macht en initiatief in de bureaucratie wordt gepositioneerd.

Typerend voor de parlementaire democratie zijn politieke partijen met omvattende partijprogramma's met een ideologische achtergrond waartussen de burgers in periodieke verkiezingen kunnen kiezen. Democratische politiek is gericht op samenvoeging en verbinding van kwesties, belangen, groepen en zelfs partijen, in het bijzonder in politieke systemen waar regeringen coalities van partijen nodig hebben om de steun van een meerderheid van de volksvertegenwoordigers achter zich te krijgen. Parlementaire democratie verstaat zichzelf als een politiek bottom-up model dat tegelijkertijd bestuurlijk een top-down model moet zijn, omdat de regering geacht wordt haar wil op te leggen aan de bureaucratie die zich daarnaar geacht wordt te voegen *sine ira et studio*.

In tegenstelling tot het inclusieve, verbindende karakter van de parlementaire democratie is de Monnet methode fragmenterend en technocratisch. Politieke kwesties worden zowel substantieel als bestuurlijk uit elkaar getrokken. Dit is echter niet omdat het bestaan van relaties tussen beleidsproblemen niet worden waargenomen. Integendeel! Juist omdat er functionele relaties zijn, kan de Monnet methode er voor zorgen dat kwesties van nationaal niveau langzaam maar zeker naar het internationale niveau worden getild.

Hoewel de parlementaire democratie dus op gespannen voet staat met de Monnet methode, zijn ze toch samengevoegd in het geval van de EEG en in nog veel sterkere mate in de EU. Het probleem van de Monnet methode is dat zij aan haar eigen succes ten onder dreigt te gaan. Naarmate zij zich in meer sectoren heeft ingenesteld, ontstaan er interne afstemmingsproblemen die niet door een centrale regeringsmacht kunnen worden opgelost op basis van een democratisch mandaat. Op zo'n mandaat kunnen nationale regeringen zich echter wel be-



roepen om de Commissie desnoods min of meer lam te leggen of er, in sectoren van groot nationaal belang, op hun beurt in te infiltreren.

Toch is de Monnet methode uiterst succesvol geweest in het overleven in een vijandige omgeving en in het bereiken van de supranationale doeleinden ervan. Volgens onze analyse is dat het gevolg van een ongekend organisatorisch aanpassingsvermogen ervan c.q. van een combinatie van organisatiestructuren die theoretisch gezien onverenigbaar lijken. De rigide formele structuur van de Commissie, die teruggaat tot de jaren vijftig, wordt bijvoorbeeld gebruikt om de Commissie te beschermen tegen pogingen haar streven naar steeds verdere integratie onder controle te krijgen. De Commissie is er in geslaagd om allerlei beleidskwesties te fragmenteren en in te voegen in de nieuwe, Europese bestuurslaag, en daardoor ook de oppositie tegen haar voorstellen. Zij is erin geslaagd om de nodige elementen van een nieuwe Europese regering in leven te roepen, zij het met, waar dat onvermijdelijk bleek, democratisch politieke tegenwichten op Europees niveau. Achter de facade van bureaucratische hiërarchie opereren echter min of meer informele netwerken. De beleidsnetwerken die directoraten-generaal of onderdelen ervan hebben ontwikkeld en waaraan ze veelal leiding geven, zijn als het ware de natuurlijke bestuursarmen vanuit Brussel naar de quasi-federale staten. Daarin is sectorgewijs de Europese bestuursmacht geconcentreerd.

Toch was de fragmentatie binnen de Commissie en in de diverse directoraten-generaal in de jaren negentig na de grote stappen die gezet waren naar en door het Verdrag van Maastricht, zo toegenomen dat de politieke leiders van de Commissie de greep op hun staf begonnen te verliezen. De laatste Commissie-Delors liet een organisatie achter die sterk op verdere integratie gericht was, maar die nu meer te doen had dan zij aankon en die werd geconfronteerd met de uitvoeringsproblemen van na het Verdrag van Maastricht. Een en ander leidde tot een crisis van de Commissie aan het einde van de jaren negentig, zoals geanalyseerd in de rapporten van de Commissie van Onafhankelijke Deskundigen, ingesteld om deze crisis te bezweren. De crisis maakte de poging tot bureaucratisering mogelijk, een poging die bescheiden begon in de commissie-Santer en daarna aan belang won. Het aantal horizontale eenheden, die eenheden die ondersteunende en controlerende taken hebben en zich weinig bemoeien met het beleid als zodanig, namen enorm toe, net als de bureaucratische procedures waaraan de staf werd onderworpen. De reactie in de Commissie is er een geweest van het temperen van haar initiatieven enerzijds en zich door bureaucratisering te immuniseren tegen aanvallen en beïnvloeding van buiten.

Op de langere termijn gezien volgt de Commissie het proces van opeenvolgende tempowisselingen van de Europese integratie, waarbij spurts worden afgewisseld door langere perioden van stagnatie. De bureaucratisering en tempobeheersing van haar apparaat door de Commissie is zo gezien een vorm van immunisering tegen de kritiek op de rol van de Commissie en van pogingen van lidstaten tot infiltratie van de Commissie. In eerdere perioden van stagnatie is echter gebleken hoe snel de Commissie kan omschakelen van een tamelijk inert apparaat naar een organisatie die gebruik maakt van de wensen van de lidstaten tot verdere integratie. De hervormingen lijken niet meer dan een fase in de cyclus waarin de Commissie zijn rol varieert van die van beleidsmanager naar die van beleidsmaker en van een ambtelijke bureaucratie naar die van de top van de uitvoerende macht van een proto-federale staat.

Hoewel de Commissie Prodi wat timide begon, was later een duidelijke opleving te constateren. De Europese Grondwet is wat dat betreft het beste voorbeeld. De bureaucratisering kan ook gezien worden als een poging de Commissie meer te laten functioneren als ware het de uitvoerende macht van een staat met de Commissarissen als een soort ministers. Signalen in die richting waren de uitbreiding van de staf in DG Ondernemingen en Industrie waar de ver-

ticale eenheden geleidelijk in omvang toenamen. DG Regionaal Beleid was druk bezig een nieuw beleid vast te stellen met veel steviger regels dan het tot dan toe gevoerde beleid. Het Europese Bureau voor Fraudebestrijding, oorspronkelijk een veiligheidsgordel om de Commissie in het gareel te houden werd gebruikt om de integratie te bevorderen middels een Europese Openbare Aanklager werd geschapen alsmede een nieuw juridisch kader om de activiteiten van het Bureau voor Fraudebestrijding in te perken. Tenslotte was de leidende rol in de klimaatbeheersing die de Commissie voor zich opeiste eveneens een duidelijk teken van een krachtig streven de integratie te bevorderen. Dit werd nog recentelijk gehonoreerd doordat klimaatbeheersing bij de herzieningsbijeenkomst van de Europese Raad van Juni 2007 door de lidstaten als doelstelling in het herziene EU-verdrag werd opgenomen.

Het nieuwe elan na de intensieve eerdere bureaucratisering mag enigszins paradoxaal voorkomen, maar het kan, nogal ironisch, mede verklaard worden door de groei van de horizontale eenheden. Volgens onze zegslieden zijn deze namelijk het meest idealistisch ingesteld ten aanzien van de Europese integratie als geheel, in tegenstelling tot de beleidsvormende eenheden die vrij snel sectoraal idealisme en sectorale loyaliteiten schijnen te ontwikkelen. De door ons bestudeerde periode volgde in feite het al langer bekende patroon van de Europese integratie als een “stop and go” vooruitgangsproces. Expansie na stagnatie, een dynamische Commissie die dan weer wordt afgeremd door bureaucratisering. De uitbreiding van de EU verscherpte daarbij de coördinatie- en beheersproblemen van de Commissie. De uitbreiding onderging daarvan echter ook negatieve gevolgen, zoals blijkt uit onze empirische bevindingen, waarop nu nader zal worden ingegaan.

In het kader van dit onderzoek zijn zes EU-organisaties onderzocht met het oog op de effecten van de EU-uitbreiding. Dit onderzoek geschiedde op basis van primaire en secundaire literatuur alsmede van gesprekken met EU-beleidsambtenaren in die zes organisaties. De opzet was om gegevens te verzamelen uit een brede variatie van organisaties, alsmede één van de Commissie onafhankelijke organisatie, die echter wel allen in staat waren commentaar te leveren op elkaars activiteiten. Ook zijn gesprekken gevoerd met ambtenaren van nieuwe lidstaten (NLS) over hun ervaringen in de samenwerking met de Commissie. Bovendien vonden ook enkele gesprekken plaats met ambtenaren van het Secretariaat-Generaal van de Commissie dat verantwoordelijk is voor de coördinatie op Commissie-niveau.

Twee Directoraten-Generaal werden gekozen omdat ze veel geld uitbetalen en veel contact onderhouden met de NLS, DG Landbouw en Plattelandsontwikkeling en DG Regionaal Beleid. Bij wijze van contrast werden ook twee beleidsvormende DGs, DG Milieuzaken en DG Onderneming en Industrie gekozen. Ook deze onderhielden veel contact met de NLS. De antifraude organisatie van de Commissie, het Europees Bureau voor Fraudebestrijding is nader bekeken in het licht van de hervormingen van de Commissie. Het Europese Milieu Agentschap, tenslotte, bood de mogelijkheid om informatie in te winnen over de rol van DG-Milieuzaken in de uitbreidingsproces, waar het EMA zelf ook bij betrokken was. Bovendien vertegenwoordigt het één van vele sectorale agentschappen die in de toekomst de Commissie zouden kunnen vervangen en daarom op wantrouwen kunnen stuiten in de Commissie.

Het Europese Bureau voor Fraudebestrijding (EBF) is een onderdeel van de verdedigingslinie van de Commissie, zoals de reactie van laatstgenoemde op het EBF laat zien. De hervorming van het toezicht op fraude in de vorm van het EBF werd weliswaar geaccepteerd, maar tegelijkertijd werd deze hervorming slechts een beperkt effect gegund. Het EBF opereerde meer voor de buitenwacht en was niet geheel onafhankelijk van de Commissie. Ook de onderzoeksbevoegdheden van het EBF waren niet eenduidig vastgelegd. De Commissie zorgde er voor dat de beschikbare middelen voor het EBF beperkt bleven, hoewel het EBF zeer ruime



taken had. Tegelijkertijd zag de Commissie in het EBF een mogelijkheid haar personeel meer ambtelijk te laten functioneren en op die manier een einde te maken aan de invloed en de ongezonde banden tussen de industrie, lidstaten en ambtenaren van de Commissie. Het EBF was nuttig ter ondersteuning van het streven van de Commissie de bureaucratisering er minder problematisch en dreigend te laten uitzien. Het EBF droeg bij aan de algemene tempoverlaging in de Commissie doordat de staf onderworpen werd aan een toenemend aantal controles om EBF-onderzoek te voorkomen.

De Commissie bleek ook zeer goed in staat de dreiging op termijn in een voordeel te veranderen door het EBF te gebruiken in haar eigen cyclus van bureaucratisering om vervolgens de integratiemissie weer op gang te brengen. De EBF-staf die eigenlijk corruptie en fraude diende te bestrijden, was behulpzaam bij het op gang brengen van nieuwe ontwikkelingen als EUROJUST en de Europese Openbare Aanklager. Het EBF vertoonde net als de Commissie en de EU in het algemeen, de neiging aan de NLS eisen te stellen die achterwege hadden kunnen blijven als de Commissie er zelf beter aan toe was geweest. Het EBF was de schepping van nog een actor (of beter: de heruitvinding en versterking van een eerdere actor) in het EU-systeem, om een probleem op te lossen dat wellicht beter had kunnen worden opgelost door de organisatie zelf wat rationeler te laten functioneren.

Het EMA was een interessant geval omdat het ontwikkelingen in de EU onthulde en nog eens de weerstand van de Commissie liet zien tegen werkelijke hervorming en tegen iedere organisatie die toe wil zien op haar handel en wandel. De Commissie reageert volgens zegslieden nogal allergisch op Europese agentschappen onafhankelijk van hun nut, ook al is dit begrijpelijk in zoverre de lidstaten althans het EMA als een nuttig institutioneel tegenwicht zien ten opzichte van de Commissie. Het EMA dankt zijn bestaan aan een doelbewuste poging van de lidstaten om in samenwerking met belangengroepen weer meer greep te krijgen op het terrein van het milieubeleid. Eerder was dat ook al het geval geweest in de EGKS, waar de staalkartels en de lidstaten met elkaar verbonden waren. Het EMA is symptomatisch voor de meer algemene sectorale splitsing van EU-beleidsvelden, net als de andere agentschappen en daarmee verbonden netwerken, waarbij de rivaliteit van de lidstaten met de Commissie resulteert in telkens nieuwe actoren met door compromissen verzwakte bevoegdheden die niet effectief worden gecoördineerd door enige centrale autoriteit. Het EMA stond erg kritisch tegenover het DG en zijn activiteiten in het kader van de uitbreiding van de EU. Met name was er kritiek op het onvermogen van de Commissie om voor interne coördinatie te zorgen, waardoor de NLS gedwongen werden om hun schaarse middelen aan te wenden om elkaar duplicerende netwerken in het leven te roepen. Een bijzonder interessant gegeven was de veranderende relatie tussen het EMA en DG Milieuzaken (DG-M). Toen het DG zeer actief was en veel interne conflicten kende, was het conflict met de EMA op zijn hevigst. Dit veranderde met de heroriëntatie van het DG via personeelsreorganisaties op verschillende niveaus, waardoor het DG meer open kwam te staan voor economische belangen. Het EMA leek daardoor soms bijna een alternatief voor DG-M, moderner en minder formeel en met veel meer partnerachtige relaties ten opzichte van de lidstaten dan het DG.

DG-M bood ook een goede blik op het soort ambtelijk gedrag dat de Commissie bevordert ten einde haar macht te doen groeien als de tijd er rijp voor is. Het microniveau van de beleidsambtenaren vertoont ondernemerskwaliteiten die boven in de hiërarchie lijken te ontbreken. Daarbij lijkt de hiërarchie veel minder streng als gelet wordt op hoe de Commissie in de praktijk werkt en wat voor gedrag het stilzwijgend aanmoedigt. Een rigide bureaucratie wordt gehandhaafd, maar ook losgelaten in een bepaalde fase van de beleidscyclus van de EU. De Commissie moedigt ambtelijke zelfstandigheid en eigen initiatief aan, omdat het succes van de Commissie veelal wezenlijk afhankelijk is van stafleden en hun doorzettingsvermogen. Ze

beschikken over een enorme vrijheid en discretie in vergelijking tot de ambtenaren van de lidstaten. Ze zijn bij uitstek netwerkers met de daartoe vereiste sociale vaardigheden. Ondernemingszin is ook vereist om op het juiste moment een regeling voor te stellen die er door komt. Commissie-ambtenaren worden aangemoedigd te concurreren om alles in de Commissie, inclusief hun aanstelling, hun dossiers en hun promotie. Mogelijkheden tot promotie zijn zeer beperkt, in het bijzonder als het gaat om de benoeming tot afdelingshoofd. DG's die beschikken over zulke ambtenaren met frontervaring, hebben een kostbaar bezit in huis. Mits op de juiste plaats ingezet, zijn zij bepalend voor het succes van hun DG. De grote hoeveelheid milieuwetgeving die DG-M heeft weten af te leveren, was het product van buitengewoon capabele ambtenaren, veelal juristen. Het DG schiep werk voor zichzelf en herbergde dynamische ambtenaren die werden aangemoedigd de hiërarchie te omzeilen zolang de Commissie als geheel dat wenselijk achtte. Later gebruikte de Commissie echter diverse methoden om dit soort gedrag althans gedeeltelijk onder controle te krijgen.

Dit gold in het bijzonder voor één netwerk dat met hand en tand vasthield aan de oude cultuur en ideologie van het DG-M. Dit netwerk bleef trouw aan een zeer idealistische vorm van Europeanisme en milieubescherming. De lidstaten oefenden echter druk uit om het DG onder controle te krijgen toen een meer economisch georiënteerde Commissie aantrad die bereid was om via personeelsreorganisaties de beleidsnetwerken van het DG-M te verzwakken en af te breken. Door bureaucratisering werd de productie van regelgeving sterk verminderd en wel in zo'n mate dat het imago van het DG onduidelijk is geworden. Bovendien werd DG Milieu scherp gecontroleerd vanuit DG Ondernemingen en Industrie.

Fragmentatie en rivaliteit tussen DG's bleek ook in het geval van DG Landbouw en Plattelandsontwikkeling (DG-L&P). Ook daar bestond veel rivaliteit met andere DG's alsmede een grote mate van fragmentatie. Ook bleek er een groeiende bereidheid van de lidstaten om te interveniëren in het DG, onder andere door er landgenoten in te doen benoemen die ook duidelijk bereid zijn op te komen voor nationale belangen. Volgens de literatuur is er een proces van renationalisering van landbouwbeleid gaande. Het zal niet verbazen dat daartegen weerstand ontstond in het DG, maar de bureaucratisering is sterk toegenomen en de beleidsnetwerken kunnen daardoor niet meer zo effectief functioneren. Als gevolg van deze verwikkelingen kwamen de NLS niet goed aan de bak in DG-L&P.

Complexe en excessieve bureaucratische eisen hebben geresulteerd in zeer beperkte financiële overdrachten voor de landbouw in de NLS in de relevante periode. Ook conflicten binnen het DG-L&P als gevolg van verschillen in nationale managementstijlen werden gesignaleerd. De bureaucratisering is gepaard gegaan met een toenemende macht van de horizontale eenheden. Personeelsreorganisatie werd gebruikt als een manier om verzet tegen hervorming van beleid te breken. Volgens zegglieden in de Commissie werd er vanuit de markteenheden actief weerstand geboden tegen hervormingen en organisaties. Volgens hen was het DG zeer veerkrachtig en succesvol gebleken in zijn streven pogingen tot hervorming en reorganisatie te weerstaan.

DG Regionaal Beleid (DG\_RB) heeft tot voor kort ook ingeboet aan beleidsvrijheid en is meer en meer een controlerende organisatie geworden. Horizontale afdelingen zijn toegenomen met het oog op de interne coördinatie met name tijdens de hervorming, net zoals in de meeste andere DG's. Het DG ontbeerde een krachtig centraal gezag, waardoor de afdelingsdirecteuren zeer autonoom waren. Ook hier bestond een tendens van de lidstaten om "eigen mensen" benoemd te krijgen. Net als in andere DG's zijn de hervormingen enigszins aveerchts gaan werken en uitgemond in bureaucratie als een zelfstandig doel. Volgens zegglieden was DG-RB verwickeld geweest in ongelooflijke rivaliteiten met andere DG's en wel vanwege



diepgaande, deels ideologische verschillen van mening over het te volgen beleid. Aan beleids- en andere netwerken had ook dit DG geen gebrek. Sommige daarvan stonden bepaald niet welwillend tegenover de uitbreiding van de EU, hetgeen soms resulteerde in beleid dat problematisch was voor de NLS en hun het gevoel gaf niet erg welkom te zijn in de EU. Verscheidene afdelingen binnen het DG-RB onthielden zich van bemoeienis met de NLS, terwijl dat wel degelijk tot hun taak behoorde. In 2004 is daar echter via reorganisatie van het DG verandering in gekomen.

Bij DG Ondernemingen en Industrie spraken zegslieden over de communicatie tussen de DGs als slecht of non-existent. Ook hier was sprake van toenemende bemoeienis van de Lidstaten met het DG, een enorme uitbreiding van de horizontale afdelingen en bureaucratische procedures. Er waren minstens twee grotere reorganisaties nodig om het DG in lijn met de Lissabon doelstellingen te brengen en om de nieuwe Commissaris voor Mededingingsbeleid in te passen. Volgens zegslieden werkten veel hervormingen negatief uit op de NLS simpelweg omdat er niet genoeg tijd overbleef voor met name de afdelingshoofden om zich van alle taken tegelijkertijd te kwijten. NLS-ambtenaren klaagden dat hun tegenstrijdige mededelingen werden gedaan en dat de procedurele bureaucratie vertwee- of drievoudigd was. De communicatie en coördinatie tussen de DGs werd bekritiseerd. DGs hadden teveel discretionaire macht waaruit "vreemde" besluiten resulteerden. Vroeger zou het DG de nodige beleidsnetwerken hebben gekend, maar de meer ingrijpende organisaties hadden de invloed ervan verminderd.

De belangrijkste fenomenen die werden aangetroffen in de Commissie komen neer op: fragmentatie van de Commissie, de groei van beleidsnetwerken waarvan de invloed echter minder werd als gevolg van personeelsreorganisaties en bureaucratisering en meer beïnvloeding van de DGs vanuit de lidstaten. Valt er iets te zeggen over de toekomst van de EU? Het middeleeuwse pausdom heeft zich op een wijze ontwikkeld die erg lijkt op de ontwikkeling van de EU. Het functioneerde net als de Commissie als een vaccin tegen oorlogszucht en verscheurdheid. Er ontwikkelde zich destijds ook een supranationale bestuurslaag die beoogde het staatsgezag van de Romeinse keizertijd te imiteren. In de loop van de tijd bleek het echter niet het juiste antwoord op de noden en behoeften van het Christendom. Wat begon als een idealistische organisatie werd geleidelijk aan een gecentraliseerde en centraliserende bureaucratie. Als gevolg daarvan zag de middeleeuwse kerk zichzelf en het Christendom hopeloos complex en gefragmenteerd raken, maar ook overgecentraliseerd en op grote afstand van de gelovigen. De hoeveelheid canonieke en wereldse wetgeving werd als verstikkend ervaren. De Curia raakte soms gefragmenteerd in netwerken van cliënten waarin wereldse heersers een grote rol speelden. Kardinalen waren meer gericht op hun regionale achterband dan op de universele, officiële doeleinden van het Pausdom. Het Conciliarisme van de 15 eeuw was een dappere poging het uiteenvallen van de kerk van onderen uit een halt toe te roepen. De reactie van de kerkbureaucratie was echter de democratie de kop in te drukken en de noodzaak van hervorming te miskennen door de hiërarchie en de bureaucratie juist te versterken. Het resultaat daarvan was dat de kerk fundamenteel gespleten raakte door de reformatie.

Sommige van deze trends zijn waarneembaar in de meer recente geschiedenis van de EU zoals boven weergegeven en zouden kunnen dienen als waarschuwing en als aansporing voor hervorming en meer democratie. De recente herstart van de verworpen Europese Grondwet in de vorm van een herziening van de Verdragen die de nationale bestuurders zal toestaan om de visies van burgers te omzeilen en net te doen alsof ze er niet bestaan, zal wie leest over het middeleeuwse Europa heel bekend voorkomen. De betrekkingen tussen de kerkelijke en wereldse bestuurders waren ongezonder nauw en dat was met name het geval toen de reformatie in aantocht was. Het juiste antwoord zou zijn om de waarschuwingen ter harte te nemen en EU te hervormen en met het oog op de toekomst meer democratisch toegankelijk te maken. De

gele en rode kaartprocedures zullen mogelijk wel de betrokkenheid van de nationale parlementen bij de EU doen toenemen en hier en daar schendingen van het subsidiariteits- en proportionaliteitsbeginsel weten in te dammen. Het is echter zeer de vraag of dit ook zal leiden tot een grotere betrokkenheid van de EU-burgers, ook al wordt de macht van het EP parallel met de supranationale bevoegdheden van de Raad uitgebreid. Dit vereist een directe democratische legitimatie van een Europese regering en niet slechts de stoplappen van een gele of rode kaart procedure.

## **AUTHOR'S CURRICULUM VITAE**

Mark Stout was born on 27 March 1967 in London. He obtained his BA (hons) degree in Politics and International Relations from Reading University, UK in 1990. He received a financial grant from the UK Civil Service working with the European Commission to complete his MA European Studies from the Graduate School of European and International Studies, Reading. He worked for the government department from 1990 until 1992. After receiving his MA in 1992 he left to work in Germany. He taught at a range of German institutions including the RWTH Aachen and FH Aachen. He worked at the language centre of the University of Maastricht from 2000 until 2002. From 2002 until 2006 he worked as a junior researcher at the Maastricht Law Faculty. He published a book, "EU: Papacy Reincarnated?" in 2005. He currently works at the University College Maastricht as a teacher/lecturer.